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OUR GOVERNMENT:

AN

EXPLANATORY STATEMENT OF THE SYSTEM OF GOVERNMENT OF THE COUNTRY;

PRESENTING A VIEW OF THE

GOVERNMENT OF THE UNITED STATES, AND OF THOSE OF THE
SEVERAL STATES; WITH THE CONSTRUCTION OF CON-
STITUTIONAL PROVISIONS AND A PRACTICAL
NOTICE OF THEIR ADMINISTRATION.

A MANUAL FOR SCHOOLS, ACADEMIES AND POPULAR USE.

Second Edition.

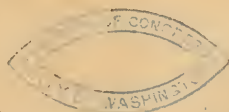
BY MORDECAI [✓]McKINNEY.

"The unity of government, which constitutes you one people, is also now dear to you." —
"In proportion as the structure of a government gives force to public opinion, it is essential
that public opinion should be enlightened."—WASHINGTON'S FAREWELL ADDRESS.

PHILADELPHIA:

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1856.



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PREFACE.

AN acquaintance with the political institutions of our country is so important, that it can neither be trite to recommend it as interesting and valuable, nor superfluous to offer new aid for its attainment.

Where there is accuracy of information, on such a subject, the attempt ought not to be considered an unworthy one, if in its method it solicits attention, familiarizes useful knowledge, or is, in any way, adapted to the wants of society.

The writer would ask that the propositions, in reference to the general subject, contained in the title, and divisions and heads of the work, be considered in connection with its declared purpose and necessary limits. There is no pretention here to the character of a full and extended treatise. The plan and method were required, it is apprehended, in order to present perspicuously the matter furnished, in a form suited for easy reference by all; and as having, besides, the advantage of suggesting to the student or reader a systematic course for pursuing his inquiries on the subject. No one can be more inclined than the writer, to recommend to all, having an opportunity of acquiring it, a thorough and complete knowledge of the government and constitutional law of our country, to be derived from the many able and profound expositions thereof that are extant.

It will be observed, that the view here given of our system of government is a practical one; exhibiting it as actually existing and

in operation, in its several parts, rather than with respect to the theory of it, in the abstract; and showing the powers and duties of the general government and those of the several States, as constitutionally ascertained and administered in practice, with the relative obligations of the people.

It is with this design, that the arrangement has been adopted, by which the general subject is treated of, not in the order of the text of the federal Constitution, or of those of the States; but under divisions and heads, appropriate to the real administration of our government and laws, illustrative of principles, and which allow of the introduction of a greater amount and variety of information in its natural place.

In our complex political system, consisting of a general government, and a number of separate State governments, acting in certain relations to it and each other, the distinction between the general government and the State governments is of the greatest moment, often being the occasion of questions of much weight and delicacy. It has, therefore, been made an object especially to present this principle, with its relative bearings, throughout the work; and, it is thought, the arrangement by which the general government and that of the State governments are treated of separately, under distinct heads, is particularly suited to this end. The relations of the States to each other are, also, thus kept in view.

Besides what relates to constitutional provisions, and their construction, in a strict sense, there are embraced here such notices of Acts of Congress, the common and statute law of the particular States, and the ordinary civil officers, their duties and powers, as the nature of the subject would admit; with the endeavor to illustrate, to this extent, the principles and administration of our government and laws.

The book is designed to be a Manual, for popular use, and frequent and easy reference, on various topics of common and general

interest; to which order of disposition is an essential requisite. This plan demanded the employment of numerous divisions, titles and heads; and it ought not, then, to be an objection, that in some instances there is a repetition of the same matter under different heads.

That there should be a general knowledge, in the community, for practical purposes, of our institutions and laws, lies at the very foundation of our government. Where the political rights of all our citizens are equal, and every one is enabled to exert an influence in the administration of public affairs, so much affecting the interests of all, they should be well informed as to their rights and duties, and in regard to the powers conferred upon those whom they place in office. There is not so much weight to be attached to the existence of good forms of government, or just and beneficent laws, as to their application and execution; and many late events, all experience, in our country, must seriously force upon the mind the consideration that the due administration of the government and laws depends in a great degree upon the cordial co-operation of the people at large; and of course, upon their intelligence and virtue.

It is only a proper understanding of our civil institutions that can induce strong and settled attachment to their principles, and impart ability for their maintenance; compared with which all other impulses or sentiments in regard to them are as nothing.

Capable of accomplishing all the ends of a free government, "securing the blessings of liberty," in reference to all under their protection and subject to their control; under all exigencies and for all time; their efficacy, under the righteous Ruler of nations, is in the hands of the people.

The propriety of inculcating this kind of information in the education of youth must be obvious. It is the writer's impression that the works published especially for this purpose have been either

too technical and abstract ; or, in many instances, too simple and superficial.

It seems that there are but wanting facilities of the right kind in order to secure the most useful attention to these subjects, among all classes of the community.

An eminent jurist, and author on constitutional law, has observed ; “ Constitutions are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them ; the people adopt them ; the people must be supposed to read them, with the help of common sense ; and cannot be presumed to admit in them any recondite meaning, or any extraordinary gloss.”

This work was at first issued under the title of the United States Constitutional Manual. This second edition, in a new form, contains much additional matter, condensely arranged, and is better suited to general readers.

“ The Government of Pennsylvania,” a work on a similar plan, and to be used in like connection, will be soon published.

HARRISBURG, SEPT. 6, 1856.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I. All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.—1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such

enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election, to fill such vacancies.

5. The House of Representatives shall choose their Speaker, and other officers, and shall have the sole power of impeachment.

SECTION III.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION IV.—1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State, by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION V.—1. Each House shall be the judge of the election, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of the absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two Houses shall be sitting.

SECTION VI.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either House, during his continuance in office.

SECTION VII.—1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment,) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII. The Congress shall have power :

1. To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations ;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years ;

13. To provide and maintain a navy ;

14. To make rules for the government and regulation of the land and naval forces ;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions ;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States ; and to exercise like authority over all places, purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ; and

18. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.—1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another ; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State.

SECTION X.—1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of the Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.—1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for

each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more, who have equal votes, the Senate shall choose from them, by ballot, the Vice President. [*This clause altered and supplied by the XIIIth Amendment.*]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. [*So also as to the Vice President. See XIIIth Amendment.*]

6. In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States.”

SECTION II.—1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION III. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV. The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the

Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.—1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.—1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.—1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

SECTION III.—1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States or of any particular State.

SECTION IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before

the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution, between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth, In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

New Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

Connecticut.

Wm. Sam'l Johnson,
Roger Sherman.

New York.

Alexander Hamilton.

New Jersey.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thos. Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris

Delaware

George Read,
Gunning Bedford Jr.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.

James M'Henry,
Dan. St. Tho. Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, jun.

North Carolina.

William Blount,
Rich'd Dobbs Spaight,
Hugh Williamson.

South Carolina.

John Rutledge,
C. Cotesworth Pinkney,
Charles Pinkney,
Pierce Butler.

Georgia.

William Few,
Abraham Baldwin.

Attest—WILLIAM JACKSON, Secretary.

AMENDMENTS.

THE following articles proposed by Congress, in addition to, and amendment of the Constitution of the United States, having been ratified by the Legislatures of three-fourths of the States, are become a part of the Constitution.

ARTICLE I.

(First Congress. First Session. March 4, 1789.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall any person be subject, for the same offence, to be twice

put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

'The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

(Third Congress. Second Session. December 2d, 1793.)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

(Eighth Congress. First Session. October 17th, 1803.)

The electors shall meet in their respective States, and vote by ballot, for President and Vice President; one of whom at least shall not be an inhabitant of the same State with themselves: they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed. And if no person have such a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice; and if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

OUR GOVERNMENT.

PART THE FIRST.

Of the Government of the United States of America.

CHAPTER I.

OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA, IN GENERAL.

1. THERE are three simple forms of civil government; monarchy, aristocracy, and democracy. This division is proper rather for the purposes of order and explanation, in treatises on the subject of such government, than as expressive of actual systems. The principles of these theories are variously applied and combined in the construction of national governments, and in their administration.

2. Monarchy is the government of one chief magistrate, under whatever title, as king, emperor, czar or sultan. There are different kinds of monarchy. Monarchy may be *despotic*, where the chief magistrate has absolute power, and rules by his simple will and pleasure; or it may be *limited*, the monarch being obliged to rule in conformity to a fixed constitution of government and established laws, and where he is controlled by some other power in the State. It is *hereditary*, where on the decease of the king, or other such ruler, his heir becomes his successor. It is *elective*, where the monarch is elected by the nobility, or the people or their representatives.

3. Aristocracy is the government of an order of nobility, the chief men, or a select number of persons in the State. Where it is in the hands of a very few persons it is called an oligarchy.

An aristocracy may be hereditary, where each of the persons so governing exercises his power by right of birth, and at his death it is held by his heir.

4. Democracy is the government of the people; exercised directly by themselves, or mediately through their representatives. These three forms of government are often united and mixed; a government being formed on principles belonging to each of them; or it may be so as to any two of them.

5. A republican government is one in which the people rule through their representatives chosen or appointed by them for the purpose.

A community of people with an established civil government is called, according to the nature of the government, a kingdom, an empire, a State, nation or republic. Those in which the people rule by themselves or their representatives are called *free* governments.

Where several States are united together, by compact, having constituted a general power of government over them or their people, in reference to some common purposes, they are called a Confederation of States.

NATURE AND FORM OF THE GOVERNMENT.

6. The form of government of this country is that of a Republic. The United States of America, as a nation, are a federal republic; (a) formed, at first, and constituted by all the people of the United States (b) in their original and aggregate capacity; with a general government of limited powers, for national purposes, and operating upon the individual citizens; the several States having separate republican governments for the regulation of their internal affairs respectively, in accordance with the Constitution of the Union.

7. Under the system of government of this country, the supreme powers of government are divided between the government of the United States and the governments of the individual States. The former, created by the federal Constitution, is a government, in the proper sense of the term, within the sphere of its powers, as the latter, created by the Constitutions of the States, are governments, within their several spheres; the one thus operating in all the States, and the others separately in each State; and there being a concurrent operation, in certain cases, by the general government and the several States.

8. There is a general government for the Union, having certain powers expressly declared in the written Constitution of the United States, or necessarily implied (c) by its provisions; and there are the several States, the people of each State having all powers of

(a) See explanation of these terms further on, in this chapter, par. 24-6.

(b) See p. 42, and note A in Appendix.

(c) See p. 44.

government and possessing all rights, not thus declared and implied, nor prohibited to them severally by that Constitution, nor parted with by it to the other several States. The government of the Union is one of enumerated powers.

THE INDEPENDENCE OF THE STATES.

9. The original States, formerly colonies of Great Britain, became free and independent, respectively, by their Declaration of Independence, on the fourth day of July, 1776, the birth-day of our national independence.

The *declaration*, not the *recognition*, of our independence has universally been regarded as our national era.

10. The Declaration of Independence was made by the Congress of Delegates of the united colonies. The Congress was composed of delegates appointed by the people of the colonies, in their primary and sovereign capacity.

By this Declaration of Independence all political connection between those colonies and Great Britain was totally dissolved and they became free and independent States. They then, for the first time, and by that act, assumed the name of the United States of America; the national title since that period retained and continued.

This Declaration was sustained by the successful defence of the States against Great Britain, in the war of the American revolution, on the termination of which their independence was acknowledged by treaty with that country, and subsequently recognised by other nations.

The thirteen original States were Virginia, Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina and Georgia.

11. "The declaration of the independence of all the colonies was the united act of all. It was a declaration by the representatives of the united States of America in Congress assembled;"—"by the delegates appointed by the good people of the colonies." It was not an act done by the State governments then organized, nor by persons chosen by them. It was emphatically the act of the whole people of the united colonies, by the instrumentality of their representatives, chosen for that, among other purposes. It was an act of original, inherent sovereignty by the people themselves, resulting from their right to change the form of government, and to institute a new government, whenever necessary for their safety and happiness. No State had presumed of itself to form a new government, or to provide for the exigencies of the times, without consulting the Congress on the subject; and when

they acted, it was in pursuance of the recommendation of Congress. It was therefore the achievement of the whole, for the benefit of the whole. The declaration of independence has accordingly always been treated as an act of paramount and sovereign authority, complete and perfect in itself, and by its own act working an entire dissolution of all political connexion with and allegiance to Great Britain; and this, not merely as a practical fact, but in a legal and constitutional view of the matter by courts of justice." (*d*)

THE COLONIAL GOVERNMENTS.

12. What was the nature of the governments of the colonies, prior to the American Revolution?

The colonies were dependencies of Great Britain, owing allegiance thereto; and they had governments, in respect to their local and interior affairs, organized, and exercising power, in accordance with the grants, commissions, and charters issued by the British king.

13. A colony is a body of people forming a settlement in a remote province or territory, under the authority of, and to remain subject to the jurisdiction of their parent country.

The title to the territory occupied by these colonies, and considered to be within their boundaries, and the right of government therein, were claimed by Great Britain, on the ground of the discovery and settlement of that part of North America by the citizens of that nation and under its authority. Such right in reference to newly discovered countries was recognized in practice at that time by the nations of Europe.

The colonists were subjects of Great Britain, entitled to the rights and immunities of citizens thereof, and its laws being in operation in respect to them, as far as applicable to them in their situation and circumstances.

14. There were three forms of colonial government; viz., Provincial, Proprietary, and Charter Governments.

First. The Provincial Governments were those established by the grants or commissions of the king, in which the whole political and civil power was to be exercised under his immediate authority and control. Under them there was a Governor of the Province, appointed by the King, as his representative or deputy, and to be governed by instructions; and also a council, appointed in the same manner, who, besides their legislative authority, were to assist the governor in the discharge of his official duties. Provincial Assemblies were constituted, composed of the Governor,

council, and the representatives of the freeholders, which had the power of making local laws and ordinances, subject to the ratification or disapproval of the crown. The governor had power, with the advice of the council, to establish courts, to appoint judges, magistrates, and other officers, for the province; to pardon offences, and remit fines and forfeitures; to raise military forces for defence; and to execute martial law in time of invasion, war and rebellion. Appeals lay to the king in council from the decisions of the highest court of judicature of the province, as indeed they did from all others of the colonies.

This form of government existed in the provinces of New-Hampshire, New-York, New-Jersey, Virginia, the Carolinas, and Georgia.

15. *Secondly.* Proprietary Governments were those, under which the right of territory and jurisdiction was granted, by the king to one or more individuals, as proprietaries, subject to the sovereignty of the mother country. In these governments, the proprietaries were governors, or there were governors appointed by the proprietaries, and legislative assemblies were convened under their authority.

There existed three Proprietary Governments at the period of the American Revolution; viz., those of Maryland, Pennsylvania, (e) and Delaware.

16. *Thirdly.* Charter Governments were those, established by the charters of the king, and under which the colonies possessed the general powers of government, including the powers of legislation and taxation, within their own territorial limits; though dependent upon, and subject to the realm of England.

The Charter Governments existed in Massachusetts, Rhode-Island and Connecticut.

In Massachusetts, the governor was appointed by the king; the council chosen by the General Assembly; and the House of Representatives by the people. In Connecticut and Rhode-Island the governor, council and assembly were chosen by the freemen of the colony, and all other officers appointed by their authority.

17. The following principles and circumstances were, notwithstanding the diversities of their organization of government, common to all the colonies.

(1) They enjoyed the rights and privileges of British born subjects, and the benefit of the common law of England; and all their laws were required to be not repugnant to, but, as near as might be, agreeable to the laws and statutes of England.

(2) In all the colonies local legislatures were established, one branch of which consisted of representatives of the people freely chosen.

(e) See the Pennsylvania Constitutional Manual by the author of this work.

(3) The colonies were considered, not as parcel of the realm of Great Britain, but as dependencies of the British crown, and owing allegiance thereto, the king being their supreme and sovereign lord.

(4) The colonies had no direct political connection with each other. Each was independent of all the others; and each, in a limited sense, was sovereign within its own territory. There was neither alliance nor confederacy between them.

(5) Though the colonies were independent of each other in relation to their domestic concerns; they were not wholly alien to each other. They were fellow subjects, and for many purposes one people. Every colonist had a right to inhabit, if he pleased, every other colony; and as a British subject, he was capable of inheriting lands by descent in every other colony. The commercial intercourse of the colonies, too, was regulated by the general laws of the British empire; and could not be restrained, or obstructed by colonial legislation.

THE REVOLUTIONARY GOVERNMENT.

18. The united colonies had at first a system of general government, preparatory to, and at the commencement of the American revolution. It was a national or general government, organized by the representatives of the people, the authority of which was exercised by the Congress of Delegates, or Continental Congress. It was called the "revolutionary government." The first Congress assembled in 1774; in 1775 a second continental Congress met, and held its sessions during the revolutionary war; and this government continued until the formation of the confederated government in 1781.

The colonies often united together for the purpose of their defence and general welfare. And agreements were early formed among them for common action in resistance against the usurpations and oppressions of the government of Great Britain.

The Congress of 1775 published a Bill of Rights; styling themselves "The Delegates appointed by the Good People of these Colonies." In these Congresses the votes were taken by colonies; the delegates from each colony casting one vote.

"The Congress thus assembled, (in 1774) exercised *de facto* and *de jure* a sovereign authority; not as the delegated agents of the governments of the colonies, but in virtue of original powers derived from the people.

"Thus was organized, under the auspices, and with the consent of the people, acting directly in their primary and sovereign capacity, and without the intervention of the functionaries to whom the ordinary powers of government were delegated in the colonies, the

first general or national government, which has been very aptly called "the revolutionary government," since in its origin and progress it was wholly conducted on revolutionary principles.

"As soon as the Continental Congress assumed powers and passed measures, which were in their nature national, to that extent the people, from whose acquiescence and consent they took effect, must be considered as agreeing to form a nation.

"From the moment of the Declaration of Independence, if not for most purposes at an antecedent period, the united colonies must be considered as a nation *de facto*, having a general government over it, created, and acting by the general consent of the people of the colonies.

"It was the result of an examination before the Supreme Court of the United States, that the Congress, before the confederation, possessed, by the consent of the people of the United States, sovereign and supreme powers for national purposes."(*f*)

THE CONFEDERATION OF THE STATES.

19. Another system of general government was afterwards adopted and used by the United States.

After the declaration of independence, there was formed a confederation of the States, under the "Articles of Confederation," the authority of which was exercised by the Congress, as expressly delegated to it.

These were adopted by the Congress of Delegates in November, 1777, and finally ratified, so as to become obligatory upon all the States, in March, 1781.

It was a union of the States, declared to be perpetual, "for the common defence and general welfare; but it was, in effect, only a league between the States as independent communities, acting upon their governments severally, by the terms of which the authority of their Congress of Representatives was binding upon them, but without any provision for enforcing its requisitions, or adding any sanction to its laws.

The Congress consisted of delegates chosen every year by each State, not less than three nor more than seven in number; each State to pay the expenses of its own delegates; the votes to be taken by States, each State to cast a single vote.

The expenses of the confederation, in conducting the war, and for the general welfare, were paid out of a common fund, to which contributions were made by the several States, in a proportion prescribed by the articles.

The confederation continued from the time of the ratification of

(*f*) See Story on the Constitution, pp. 186, 200, 207.

the articles to the period when the present Constitution went into operation.

The confederation of the States did not answer the purposes designed by it. It was found, after the termination of the revolutionary war, to be too weak for the ends of a national government.

ORIGIN AND NATURE OF THE PRESENT SYSTEM OF GOVERNMENT.

20. The present government of the United States was formed by the agreement of the people, expressed in conventions of their representatives, whereby they adopted a written constitution for the government of the people of the United States as a nation. There was thus formed a Union of the people, a government for the whole.*

21. As to its nature, in general, the authority of the government proceeds from and acts upon the people as individual citizens thereof.

22. The fundamental principle of our government is that the sovereignty or supreme power is in the people; that it is the right of the people to make laws to govern themselves. The government is based on the fact of this right in the people.

As accordant with this truth, the genius of our free institutions admits the principle of the equality of human rights, in civil affairs. It was the ruling sentiment of these principles that incited to, and effected this structure of our government, making its end to be "to establish justice, to secure the blessings of liberty."†

23. The principle of the representation of the people is fully applied in our system of government. It is one of the leading principles in our general government, and in those of the States severally, by which the people exercise their supreme power through their representatives or delegates. It is carried out in the plan of

* "To the efficacy and permanency of your Union a government for the whole is indispensable. No alliance, however strict between the parts, can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances, in all time, have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of government better calculated than your former for an intimate Union, and for the efficacious management of your common concerns. This government, the offspring of your own choice, uninfluenced and unawed, adopted upon full investigation, and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and support."—*Washington's Farewell Address to the People of the United States*. See further on, chap. II.

† "This government—completely free in its principles."—*Washington's Farewell Address*.—

the several departments of the general government; in different modes, according to the nature of each, thus securing by the combination the best practical results. All the officers of the government are the representatives or agents of the people, possessed only of delegated powers which are to be exercised for the benefit of the people.

24. The government of the United States is called a *federal* Republic; because that in our political system there is a number of several republican States, having separate and independent governments for local purposes; which have particular relations to the general government, and to each other, according to the constitution of the Union, and which are thus united into one nation, by the act and agreement of the people. The term "federal" is derived from the Latin word *fœdus*, signifying a league, a confederacy, an alliance.

25. The Constitution of the United States is called the *federal* Constitution.

26. The federal government, as so called, is the government of the people of the United States, as a nation, and as distinct from the government of any particular State.

THE AUTHORITY AND POWERS OF THE GENERAL GOVERNMENT, IN GENERAL.

27. The subject of the government of the United States may be perspicuously considered;

I. With regard to the particular structure and organization of the government.

II. In relation to the powers vested in it; and to the restraints imposed upon, and the rights secured to, the several States.

The subject may be properly presented, as it is here proposed, in a view of the authority of the general government; of the different departments thereof, their organization and powers respectively; and of the relations of the several States and the people thereto.

28. The general government is the government of the United States, in all its departments, legislative, executive and judicial. It is also called the national government.

29. The Union is not completely sovereign, not having supreme power for all purposes; but it is sovereign in the exercise of the powers granted to it by the federal Constitution.

30. What is the extent, in general, of the powers of the general government?

The general government is possessed of only limited powers, as granted by the people of the United States in the federal Constitution, for national purposes *only*; all other matters being under

the control of the State governments, or of the people of the States severally, except where it is prohibited by the federal Constitution.

31. Is any of the particular States sovereign?

No single State is completely sovereign, or independent of the Union; but every State is sovereign in the exercise of its powers, consistently with the provisions of the federal Constitution.

32. In the federal Constitution the objects are stated for which it was established. They are therein declared to be:

“In order to form a more perfect Union; to establish justice; to insure domestic tranquillity; to provide for the common defence; to promote the general welfare; and to secure the blessings of liberty to ourselves and posterity.” *Cons. of U. S., Preamble.*

33. By “the powers of the general government” are meant the powers vested, by the federal Constitution, in the general government, or any department of it, or thus exercised in pursuance thereof.

The powers of the general government, being distributed amongst its different departments, embrace the powers which may be constitutionally exercised either by any one department, or by all the departments together. A power possessed by any one department must be included in the general powers of the government; it cannot exercise a power not comprehended therein.

The rules of construction which are applicable to the powers of the general government, are proper, also, in regard to the powers of any particular department of it.

34. How may the powers conferred by the federal Constitution on the general government be classed?

The powers granted by the federal Constitution are called; the *enumerated powers*, being the substantive and primary powers expressly specified; and the *incidental powers*, being secondary and subordinate powers necessary as means for executing or carrying into effect those enumerated powers: And these two classes include all the powers conferred upon the general government, as there is an implied prohibition of all other powers. In the federal Constitution the grant of powers is special, the prohibition of them general. There is also a class of powers in the federal Constitution called *powers prohibited to the general government*; another class called *powers prohibited to the States severally*; and another class called *concurrent powers*, or those which, from their nature or the language of the Constitution, may be exercised concurrently by the general government and the State governments. (g)

(g) See, further on, the titles “Congress of the United States,” chap. iii; “Powers prohibited to Congress and the federal government,” chap. iv; and “Powers prohibited to the States severally,” chap. v.

35. The powers of the general government are either *exclusive* or *concurrent*; (*h*) exercised by it only, or by it concurrently with the several States.

36. There are provisions in the federal Constitution which may be called and classed as those which expressly secure certain rights and privileges to the several States, and the citizens thereof. (*i*)

37. There are powers called *reserved* powers, being reserved to the States severally, or the people, by the federal Constitution. (*i*) The general government possesses only those powers which are conferred upon it as enumerated by the federal Constitution. All others are expressly declared to be withheld from it. None can exist by prerogative or inherent power, in any branch of it.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S., Amendments, Art. X.*

38. There are what may be called the *declared general principles and rights*, in the federal Constitution.

They are certain general principles and provisions, contained in the federal Constitution, which are restrictive of the powers of government, and declaratory of the rights of the several States and the people. (*j*)

39. There are certain express general provisions, in the federal Constitution, as to the delegation of powers to the general government.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S., Amendments, Art. X.*

"The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people." *Cons. of U. S., Amendments, Art. IX.*

"And nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." *Art. IV., Section III, 2.*

40. The *incidental* powers are included in the express or enumerated powers, and equally *delegated* with them, by the federal Constitution, to the general government.

41. The laws of the United States are supreme.

"The Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States,

(*h*) See chap. iii., pp. 87-8.

(*i*) See Part the First, chap. vi.

(*j*) See Part the First, chap. vi.; and as to the Declarations or Bills of Rights in the several States, see Part the Second, chap. ii.

shall be the supreme law of the land." *Cons. of the U. S., Art. VI, sect. II.*

42. What is the authority of the federal Constitution, and the Acts of Congress; and the constitution of the several States, and the laws thereof, respectively; in relation to each other?

They are authoritative and binding, in the following order: first, and paramount over all, the federal Constitution; secondly, treaties and Acts of Congress; thirdly, State constitutions; and fourthly, Acts of the State Legislatures or laws of the States severally; and in case of conflict, they must yield respectively to each other accordingly.

43. All federal and State officers are required to be sworn or affirmed to support the Constitution of the United States.

"The Senators and Representatives of the United States, the members of the State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution." *Cons. of U. S. Art. VI. 3.*

44. What is, then, the nature of the general government, in its relations to the several States, and the people of the Union?

It extends over the Union, in constitutional power, as one national community or body politic; composed, not only of the people of the States, but to a certain degree of the States themselves, for the purposes of investing the States, as well as the people, with one national character. (*k*)

Union to be perpetual.

45. The Union between the people of the several States, thus formed by the federal Constitution, is intended to be perpetual.

As the government of the Union is the government of the people, it cannot be abolished or abrogated, except by their consent.

46. No State then, nor the people thereof, has a right to recede from the Union, or to dissolve the relations subsisting between it and them. (*l*)

Allegiance and protection.

47. The people, thus, owe allegiance and obedience to both the general government and the States respectively in which they reside. The people are at the same time citizens of the State in which they reside, and of the United States, according to the federal Constitution and the laws of the Union, and to the State constitution and laws.

(*k*) Duer's Constitutional Jurisprudence, p. 219. See Part the Second, of this work, chap. i.

(*l*) See Part II, chap. i.

With this allegiance is connected the right of protection and privilege. The people of a State are entitled to the protection of the constitution and laws of the Union; and, in general, its citizens to the rights and privileges secured to the citizens of the United States. The nature of this allegiance, and its relations, will be further illustrated in the progress of this work.

48. The term "The United States" means, in regard to territory and jurisdiction, the whole of the nation. It is the name given to our great republic, which is composed of States and territories.

THE SEVERAL DEPARTMENTS OF THE GENERAL GOVERNMENT.

49. The powers of the general government, which are delegated to it by the federal Constitution, are distributed among several distinct departments of the government.

The different departments of the general government, are the *legislative*, *executive*, and *judicial*; the federal Constitution specially defining the general powers and duties of each department.

The just distribution of the delegated powers of government among distinct branches or departments of it, properly organized, is essential to the best system of republican government. Where the powers of government are all vested in the same hands, it is an absolute government, or despotism, in which there is no security against the abuse of power.

50. The several departments of the general government are organized in the modes prescribed by the federal Constitution.

51. The *legislative power*, of the general government, is vested in a Congress of the United States, composed of a Senate and a House of Representatives; both chosen periodically, the former by the States severally, the latter by the people. (*n*)

52. The *executive power*, of the general government, is vested in a President of the United States, elected, with a Vice-President, for a term of years, in a mode and upon a principle which in effect combine the suffrages of the people with those of the several States. (*n*)

53. The *judicial power* is vested in a Supreme Court, and in such inferior courts as Congress may from time to time establish; the judges holding their offices for life, unless sooner removed on conviction of misbehavior. (*o*)

54. These departments are co-ordinate branches, of the general government, with separate powers, acting independently of each other in the exercise of their peculiar powers respectively.

(*n*) See Part the First, chap. iii. (*n*) See Part the First, chap. viii.

(*o*) See Part the First, chap. ix.

55. These departments are so organized, and connected with each other, by their mutual relations, and the apportionment of the powers of government among them, as that each one may be a constitutional check upon the others, and the means of keeping them within their proper spheres.

56. The judicial department has, in the due administration of justice, according to its jurisdiction, the power of interpreting the federal Constitution, and of deciding upon the validity of the acts of the other branches of the general government, in reference to the Constitution. (o)

The people and the States are represented in the General Government.

57. Each of these departments, of the general government, in the exercise of its proper powers, is the representative of the people, as the source of its authority, and as having the supreme power.

58. The several States are represented in the general government.

The principle of representation is applied, in the Constitution, not only to the individual citizens of the United States, but to the individual States of the Union; and it pervades the three great departments, among which the powers of government are distributed and appointed. (p)

In the system of the government of the United there is a combination of the national and federative principles. Every district or territorial division of the community or nation has its *proportional* share in the government; and the States, independent and sovereign in their proper spheres, however unequal in respect to territory and population, have each an *equal* voice in the public councils. Representation in the general government is founded on these principles united. The Congress is constituted on these principles, the *House of Representatives* being formed on *proportional* representation, and the *Senate* on that which is *equal*. In the mode of the election of the *President* of the United States these principles are also combined.

TERRITORIAL GOVERNMENTS.

59. Territorial governments, in the United States, are the governments of the territories belonging to the Union, and not lying within the limits of any of the several States. They are created by Act of Congress, and are entirely dependent upon the government of the Union. The nature of these governments is more fully considered, and the subject of the acquisition of territory by

(o) See Part the First, chap. ix. (p) Duer's Cons. Jur. p. 34.

the general government referred to, under the proper heads in treating of the powers of Congress. (q)

There have been, from time to time, territory and lands, acquired by the United States, by cession from the several States, by treaty from other nations, and by purchase from the aboriginal Indians; being the domain and property of the United States, as a nation. While remaining such and without the limits of any of the several States, they with the inhabitants thereof have been, and are subject to the direct and exclusive power and jurisdiction of the general government. For some parts of this territory, in this state, there have been organized, at different times, by Acts of Congress, Territorial Governments; there being for each territory a Governor, appointed by the President, a Legislature, elected by the people thereof, and other officers, appointed by the Governor or President; the bills passed by the Legislature not becoming laws until approved by the President or Governor; and the administration of justice being through the courts of the United States. The other parts of such territory, in the same state, and the people thereof, have been governed altogether and directly by the laws of the United States. Those territories have been, and will continue to be governed by these methods, respectively, until they are, and shall be admitted, with constitutional governments, into the Union, as States, under the provisions of the Constitution of the United States.

DISTRICT OF COLUMBIA. SEAT OF GOVERNMENT.

60. The territory comprised in the District of Columbia, being within the States of Virginia and Maryland, was ceded by those States respectively to the United States; the power and jurisdiction of civil government over it, and the people thereof, being so transferred; and the cession was accepted by Act of Congress. Under the federal Constitution, Congress has power "to exercise exclusive jurisdiction, in all cases whatsoever, over such district;"§ and, by Act of Congress, it was formed into the District of Columbia, and the seat of the general government fixed at the City of Washington therein. By an Act of Congress in 1846, the City and County of Alexandria, part of said District, was retroceded to the State of Virginia.

The District is governed by the authority of the laws of the United States, as well in regard to its domestic policy as to its relations to the Union; the Acts of Congress having either adopted the laws of Virginia and Maryland respectively as the laws of the District, or having enacted new provisions for the purpose.

(q) See the title, Congress of the United States, chap. iii.

(§) Cons. of U. S., Art. I., Sec. viii, 17.

By Acts of Congress the laws of those States applicable to the respective parts of the territory, at the time of its cession, were continued in force; new provisions being made, adapted to the change of jurisdiction and mode of administration.

The District has no Legislature, of its own; and it is not represented by members, elected or appointed by the people thereof, in either House of Congress.

There is a Court established by the laws of the United States for the District, which is vested with general jurisdiction, and the judges of which are appointed by the President of the United States, with the advice and consent of the Senate; as there are also so appointed therefor an Attorney of the United States, a Marshal, Register of Wills, Judge of the Orphans' Court, and Justices of the Peace.

The District, then, is thus included within the whole territory of the United States; the laws of which, of a general nature, extend to it; and its citizens are citizens of the Union.

The nature of the government of the District, and its relations to the Union, are treated of more fully in that part of this work which refers to the powers of Congress relative to it.‡

CITIZENS OF THE UNITED STATES.

61. Citizens, under our constitutions and laws, mean the free inhabitants born within the United States, or naturalized under the laws of Congress. (r)

62. The inhabitants of this country may be divided in respect to citizenship, as generally classed, into citizens or aliens; and citizens are native or naturalized. Natives are all persons born within the jurisdiction of the United States.

In general, every free person born within the United States is a citizen, owing allegiance to the government thereof. And the children of citizens, although they are born abroad, are considered, in law, as citizens of the United States, if their parents have at some time resided here.

Under the Act of Congress, of 1802, "to establish an uniform rule of naturalization, &c.," the infant children of aliens, though born out of the jurisdiction of the United States, if dwelling within the United States at the time of the naturalization of their parents, become citizens by such naturalization. And the provision of that Act on the subject is prospective, so as to embrace the children of

(‡) See Part I, chap. iii, head Seat of Government.

(r) Kent's Comm. on American Law, p. 258, in notes. As to the naturalization of aliens, see chap. III, head Naturalization, &c.

aliens naturalized after the passage of the Act, as well as the children of those who were before naturalized. 8 *Paiges' Chan. Rep.* 433.

63. There is, properly speaking, no oath of allegiance to the general government; or, it may be said, no other than the oath to support the federal Constitution, which every officer and naturalized citizen takes.

64. Can a citizen of this government *expatriate* himself, and absolve himself from any obligations as such, and become a citizen of another nation? The perpetual allegiance of a citizen to his government is the doctrine of the common law. It appears, from the spirit of our federal constitution and laws, not to be so regarded in this country.

A citizen of one State in another.

65. The rights of a citizen of any State, in another State, are guaranteed to him by the federal Constitution.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Cons. of the U.S. Art. IV. sect. II, (t)

Free negroes and mulattoes.

66 How are free colored persons, born within the United States, to be considered?

"As citizens, but under such disabilities as the laws of the States respectively may deem it expedient to prescribe to free persons of color. (u)

SLAVES.

67. Are there persons held as slaves, in this country, under the laws thereof?

In some of the States, there are, under the laws thereof, colored persons or negroes, imported before the year 1808, or their descendants born therein, who are held by individuals as slaves; the federal Constitution recognizing the condition of such slaves, in the States, and containing certain provisions in relation to them. (v) There are, also, slaves held as property by individuals in the Dis-

(t) See Part I, chap. VI.

(u) 2 Kent's Comm. on American Law, p. 258. And see Part II, head "Relations of persons."

(v) See Part the First, chap. v, heads "Fugitives from Labor," and chap. iv, head "Importation of Slaves," and chap. iii, 43, 44.

trict of Columbia, and in some of the Territories of the United States.

ALIENS.

68. *Aliens* are persons born out of the jurisdiction of the United States, and owing allegiance to a foreign government; the citizens and subjects of another nation.

69. Aliens are divided into alien friends and alien enemies. Alien enemies are aliens whose country is at war with ours.

Alien enemies, residing here, are, by the general law, considered as enemies, and their persons and property liable to be seized and confiscated. Any evils or injustice, however, that might follow from this principle, on a declaration of war, are prevented by the interference of the government, or the laws of Congress.

70. Aliens, while residing in this country, are subject to the general laws of the United States, and of the States severally, and entitled to the protection thereof.

This is the case as to aliens living here, whose country is at peace with ours. They do not owe allegiance to the government, and are not bound to render military service, or to perform other acts having a direct reference to the government and a bearing upon other countries. They are subject to those laws, and entitled to their protection, which relate to the preservation of the peace and good order of society, which govern the rights of person, property and contract, and concern the administration of justice.

An alien has his election to sue in the Circuit Courts of the United States, or in a State court; and may be sued by a citizen in either court; and when he is a defendant in a suit commenced in a State court, it may be removed at his instance to the Circuit Court of the United States. See Part I, chap. IX, on the Judiciary of the United States.

71. As to the disabilities of aliens in this country; they cannot hold offices, vote at elections, act as jurors, or, generally, perform any service connected with the administration of the civil affairs of the country.

72. Can aliens hold property in this country?

In regard to personal property, their legal capacities are, in general, the same as those of citizens. In some of the States they cannot hold real estate; or the right to do so is limited by the laws thereof respectively.

Resident aliens may become citizens, on certain conditions, and in the manner prescribed by the Acts of Congress. (*w*) They are then called *naturalized* citizens.

(*w*) See Part I, chap. iii.

73. Naturalized citizens have, in general, the same political and civil rights which native citizens enjoy. Naturalized citizens are not eligible to some offices, and a prescribed term of citizenship is requisite as a qualification for others. A naturalized citizen is not eligible to the office of President, or Vice President of the United States.

INDIANS. INDIAN TERRITORY.

74. The Indian territory within the United States composes a part of the Union; but our treaties contemplate it as separated from that of the States. Our government treats the Indian tribes as nations and distinct political communities, having territorial boundaries within which their authority is exclusive. They are, nevertheless, deemed not foreign nations, but domestic and dependent, and under the protection of the government; and in respect to intercourse and commerce with foreign nations, they are considered to be within the jurisdictional limits of the United States, and subject to many of the regulations enacted in regard to its own citizens.

Indians are distinguished as such in the federal constitution and our laws. Indians, though residing within the limits of a State, are not citizens. *See Cons. of U. S., Art. I, Sec. II. See, on this subject, further on, Chap. III, head "Commerce with the Indians."*

THE SEVERAL STATES IN THE UNION.

New York,	Pennsylvania,	Virginia,
Massachusetts,	Maryland,	North Carolina,
South Carolina,	Georgia,	New Jersey,
Rhode Island,	New Hampshire,	Connecticut,
Delaware,	Vermont,	Tennessee,
Kentucky,	Ohio,	Michigan,
Louisiana,	Missouri,	Mississippi,
Arkansas,	Illinois,	Alabama,
Indiana,	Maine,	Florida,
Iowa,	Wisconsin,	California.

TERRITORIAL GOVERNMENTS IN THE UNION.

Minnesota,	Kansas,
Oregon,	Utah,
New Mexico,	Washington,
Nebraska,	

District of Columbia.

CHAPTER II.

OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

Of a constitution of government, in general.

1. A CONSTITUTION, in its legal and political sense, is a written declaration of the sovereign will of the people in relation to the form and powers of government.

This is the definition of a constitution, in reference to the subject under consideration, and as the term is generally used in America. Properly, that is a constitutional government which is administered according to established principles and rules, and which is the result of general consent, either actually expressed or fairly implied. A constitution, in this sense, signifies the fundamental principles on which a government is formed. It may exist in a monarchy, aristocracy, democracy, or mixed form of government; and it may be derived from custom, tradition, or the acts and proceedings of the government itself, as well as from a written compact.

A constitution of a country or nation is its fundamental law, supreme, perpetual, according to its terms.

The term, *constitution*, is formed from the Latin words *con*, with, and *statuo*, to resolve, fix or establish; and it means, in the sense here used, an agreement establishing a government for a people.

2. Constitutional law is that branch of jurisprudence which treats of the fundamental principles on which a government is formed; of the practical exercise of the powers of government in conformity with them; and of the construction to be given to them in their application.

Of the Constitution of the United States, its adoption, nature, and authority.

3. The Constitution of the United States became established, for the government of the people of the States adopting it, on their ratification of it, according to its terms.

It contains within itself a provision in regard to its ratification.

“The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.” *Art. VII.*

When was the Constitution of the United States formed and adopted?

The plan of the Constitution was adopted by a convention of delegates, appointed by the legislatures of all the original States, except Rhode Island, on the 17th day of September, 1787; and in the course of about a year thereafter it was ratified and adopted by conventions of delegates, chosen in each of the States by the people thereof.

The Constitution was ratified by the conventions of delegates in nine of the States, before the 13th of September, 1789, being thereby established between those States; and it was adopted by North Carolina, in its convention, in November, 1789, and by Rhode Island, in May, 1790, after the Constitution had gone into operation. (a)

5. What is the Constitution of the United States?

It is the written declaration of all the people of the United States, in their original and sovereign capacity, ordaining and establishing a national government, and defining its form and powers.

It is a constitution of government, by the people. It is an act of the people, and not of the States in their political capacities. "It is an ordinance or establishment of government, originating in the consent of the people; and it binds as a fundamental law promulgated by their sovereign authority, and not as a compact or treaty entered into, and to exist, between each and all the citizens of the United States, as distinct parties." (b)

"The Constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by the people of the United States." (c)

The Constitution of the United States is not a contract between the States, as sovereign States, in their organization as such, to establish and maintain a government for the common benefit of the States, and the inhabitants thereof. Nor is it a contract between each State and all the other States, to establish and maintain a government for the same ends; and so that each State reserved to itself the right of judging of the meaning of the contract. But it may be considered a contract, or compact, between each citizen dwelling within the United States and all other citizens therein, in order to establish and maintain a government for the good of the whole, with limited and defined powers; and providing that all powers not expressly given, or necessarily flowing from those which are so given, are reserved to the States or to the people; with authority in the government so created to expound its own powers.

(a) See Part I., chap I., head 6-8, 20.

(b) 1 Story on the Cons., p. 446.

(c) Opinion of the Supreme Court of the United States, 1 Whart. Rep., pp. 305, 324.

The conventions within the States, by which the federal Constitution was adopted, did not represent each a State in its political capacity, but the people dwelling within the State, as part of the people of the United States. The Constitution was adopted, not by the State, but by the people dwelling within the State.

It is immaterial whether the federal Constitution be called a contract, a compact, or grant; these are names; the substance is, that it is the act of the people *ordaining and establishing a government*.

6. The federal Constitution is to be regarded as the result of concession and compromise.

It was the act of the people of the original States, voluntarily uniting, through mutual concession and compromise in relation to various local interests and other matters, in establishing a government for the Union. And such is it, always, to be considered, in its nature, as to its obligation upon the people, and their allegiance to it.

This variety of interests arose from, principally, the actual difference in the extent and situation of the territories of the several States, in the number of their inhabitants, and in their agricultural productions, the existence of slavery in some of the States, and their peculiar laws and institutions. (§)

7. The Constitution of the United States went into operation on the fourth day of March, 1789, when Congress assembled under the new Constitution, and commenced proceedings under it.

On the 30th of April, 1789, the first President of the United States, George Washington, took the oath of office, and the government then went into operation, in all its departments.

8. Of what authority is the Constitution of the United States?

It is the supreme law of the land. It is obligatory upon the general government, in all its departments; upon the several State governments, in all their departments; and upon the whole people. Every Act of Congress, or measure or proceeding of any department of the general government; every part of a constitution, law or act of a State, its government or people; which is repugnant to any of the provisions of the Constitution, is null and void.

9. Has any State, then, the right to annul or dissolve its relations to the Constitution and government of the Union?

No, not under the Constitution. The federal Constitution is the act of the whole people, including the people of any particular

(§) "This difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests. Thus, the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." *Letter of the Convention, signed by George Washington, its President, transmitting the Constitution to Congress.*

State, by which act they established a government for the whole people, and made and ordained the Constitution a fundamental, supreme and perpetual law, that can be altered or abrogated, in any of its provisions, only in the way prescribed by its terms. The people of each State have so provided, by uniting in this act of the whole people. (*d*)

10. The provisions of the Constitution of the United States may be, in general, divided thus :

First, into those which provide for the particular structure and organization of the government ; and, secondly, into those which define the nature, extent and limitation of the powers vested in the general government, impose certain restrictions upon the several States, and reserve and secure certain rights to the several States and to the people.

They may, also, be more particularly classed under four heads ; first, those which relate to the organization of the legislative department ; secondly, those which relate to the organization of the executive department ; thirdly, those which relate to the organization of the judicial department ; and, fourthly, those which define and limit the powers delegated and the rights secured or reserved.

Constitutional questions, how determined.

11. By whom are the provisions of the Constitution of the United States to be interpreted, and their meaning and obligation finally determined ?

By the courts of the United States, on all questions capable of judicial inquiry and decision, in the regular administration of justice. The determination of the Supreme Court of the United States, in such cases, is final and conclusive. (*e*)

As the Constitution, and the laws of the United States made in pursuance of it, and all treaties made under the authority of the Union, are declared to be the "supreme law of the land ;" and the judges in every State are bound thereby ; "any thing in the Constitution or laws of any State to the contrary notwithstanding ;" as every Act of Congress, or of a State Legislature, and every part of the Constitution of any State, which is repugnant to the federal Constitution, is null and void ; and as the judicial power extends to all cases in law or equity arising under the Constitution, laws, and treaties of the United States ; it necessarily belongs to that power, whenever a case judicially arises, to determine what is the supreme law of the land ; and the determination of the Supreme Court of the United States must be final and conclusive,

(*d*) See, above, chap. I, head 8 ; and Part II., chap. I.

(*e*) 1 Story on the Constitution, p. 357.

because the Constitution gives to that tribunal power to decide in every such case, and gives no appeal from its decision.

Courts of justice have a right to pronounce, in cases under their jurisdiction, legislative acts to be void.

The courts of justice were intended, as a separate and co-ordinate department of the government, to act as an intermediate body between the people and the legislature, in order, amongst other things, to keep the latter within the limits assigned to its authority. (*f*)

The judiciary is a co-ordinate and independent department of the government, the representatives of the people of the Union, deriving their authority from them, under the Constitution.

It is the proper function of the judicial department to interpret laws, and by the very terms of the Constitution to interpret the supreme law. Its interpretation, then, becomes obligatory and conclusive upon all the departments of the general government, and upon the whole people, so far as their rights and duties are derived from, or affected by that Constitution. (*g*)

Judicial decisions of the highest tribunal, by the course of the common law, are considered as establishing the true construction of the laws, which are brought into controversy before it. The particular case is not alone considered as decided and settled; but the principles of the decision are held as precedents and authority, to bind future cases of the same nature. This is the constant practice under our whole system of jurisprudence. The general principle must have been in the view of the framers of the Constitution; and is applicable to the decisions of the Supreme Court of the United States, on questions arising under the Constitution.

Whenever the officers of any department of the government are required to act in a case, not hitherto settled by any proper authority, they must, in the first instance, decide, each for himself, whether or not the act can be done consistently with the Constitution. Such acts may become the subjects of judicial examination, and their validity, in reference to the Constitution, be thus determined. But there are cases, in which the decisions of the legislative and executive departments, thus made, must be final and conclusive, being from their very nature and character incapable of revision.

The judicial department has, in fact, constantly exercised this right of interpretation in the last result; and its whole course of reasonings and operations has proceeded upon the ground, that, once made, the interpretation was conclusive, as well upon the States, as the people. (*h*)

(*f*) 1 Story on the Constitution, pp. 345, 346, 349, 368.

(*g*) 1 Story on the Constitution, p. 357.

(*h*) 1 Story on the Constitution, p. 345, 346, 349, 368,

No State has a right, for itself, to abrogate or *annul* a law of Congress, on the ground of its being deemed by the State unconstitutional.

Rules of interpretation.

12. These are some of the most important rules of interpretation applicable to the Constitution :

I. It is to be constructed as a *frame*, or fundamental law, of government, established by the people of the United States, according to their own free pleasure and sovereign will.

“It is to receive as favorable a construction as the Constitutions of the States. Neither is to be construed alone, but each with reference to the other. Each belongs to the same system of government; each is limited in its powers; and within the scope of its powers each is supreme. Each, by the theory of our government, is essential to the existence and due preservation of the powers and obligations of the other.”

II. The Constitution of the United States is to receive a reasonable interpretation of its language and its powers, keeping in view the objects and purposes for which those powers were conferred.

In case the words are susceptible of two different senses, the one more strict, the other more enlarged, that should be adopted which is most consonant with the apparent objects and intent of the Constitution.

III. Where the power is granted in general terms, the power is to be construed as co-extensive with the terms, unless some clear restriction upon it is deducible from the context, either as expressly declared, or arising by necessary implication.

IV. No construction of a given power is to be allowed, which plainly defeats, or impairs its avowed objects.

V. In the interpretation of a power granted by the Constitution, all the ordinary and appropriate means to execute it are to be deemed a part of the power itself.

VI. In the interpretation of the Constitution, the existence of implied powers is to be admitted.

Every power which is the means of carrying into effect a given power, is implied from the very nature of the original grant. It is a necessary and unavoidable implication from the act of constituting a government, and vesting it with certain specified powers. (*i*)

VII. The powers granted by the Constitution to the general government *exclusively*, exist in three cases; where the Constitution has in express terms granted an exclusive power to the Union; where it has granted, in one instance, a power to the Union, and,

(*i*) See Part i., chap. iii., head “Duties and powers of Congress.”

in another, prohibited the States from exercising the like authority ; and where it has granted an authority to the Union, to which a similar authority in the States would be absolutely and totally *contradictory and repugnant*.

There may be the exercise of power *concurrently* in the general government and the States, where, although it may be productive of occasional interferences in the policy of any branch of administration, it does not imply any direct contradiction or repugnancy in point of constitutional authority.

Unless from the nature of the power, or the obvious results of its operations, a repugnancy must exist, so as to lead to a necessary conclusion that the power is exclusive in the general government, the true rule of interpretation is, that the power is merely concurrent.

If a State passes a law clearly within its own constitutional powers, still if it conflicts with the exercise of a power given to Congress, to the extent of its interference its operation is suspended ; for in a conflict of laws, that which is supreme must govern.

In regard to concurrent powers, there are cases in which the legislation of Congress suspends the legislative power of the States over the *subject matter* ; and also cases, in which the State laws are inoperative only to the extent of their actual conflict with the Acts of Congress.

Wherever the power given to the general government requires that, in order to be efficacious and adequate to its end, it should be exclusive, there arises a just implication for deeming it exclusive. Whether exercised or not, in such a case makes no difference.

Wherever the power is not incompatible with a concurrent power in the States, either in its nature or exercise, there the power belongs to the States.

In such a case as the last mentioned, the concurrency of the power may admit of restrictions or qualifications in its nature, or its exercise. In its nature, when it is excluded in its application from objects or purposes, which would control, defeat, or destroy the powers of the general government. In its exercise, there is a restriction upon it to the extent of any actual conflict of the laws and regulations of the States made in pursuance of it with those of the general government.

VIII. Every word employed in the Constitution is to be expounded in its plain, obvious and common sense, unless the context furnishes some ground to control, qualify or enlarge it.

IX. Where technical words are used, the technical meaning is to be applied to them, unless it be repelled by the context. Where the same word possesses a technical and common sense ; the latter is to be preferred, unless attendant circumstances point clearly to the former.

The terms used in the Constitution are to be referred for their meaning to some standard of admitted authority, from which they must have been adopted into the Constitution. What the standard of definition shall be, depends upon the term used. If the term is one of common use in the ordinary transactions of society, and so applied, it shall be taken in its common ordinary acceptation by those who use the term; if it relates to any particular art, science, or occupation, its meaning is its common understood sense, according to the usage and its acceptation among men so employed; if it is a term appropriate to the common law, or statute law, or law of nations, it must be taken as intended to be applied according to its established definition, as a known legal term.

It is not a correct rule of interpretation to construe the same word in the same sense, wherever it occurs in the Constitution. The meaning is controlled by the context. The same word may bear different meanings; and the peculiar sense in which it may be used in any sentence is to be determined by the context.

X. That an affirmative provision in a particular case excludes the existence of a like provision in every other case; and that a negative provision in a particular case admits the existence of the same thing in every other case; are rules of interpretation to be applied to particular cases, according to their nature and circumstances.

“The truth is, that in order to ascertain how far an affirmative or negative provision excludes, or implies others, we must look to the nature of the provision, the subject matter, the objects, and the scope of the instrument. These, and these only can properly determine the rule of construction. There can be no doubt that an affirmative grant of powers in many cases will imply an exclusion of all others. In relation to such an instrument as a constitution, the natural and obvious sense of its provisions, apart from any technical or artificial rule, is the true criterion of construction.”
1 Story on the Cons., pp. 393–434. See Part I, chap. III, par. 97, of this work.

Preamble of the Constitution.

13. What is the preamble of the Constitution?

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution for the United States of America.”

It is the introductory paragraph of the Constitution, setting forth the parties who established it, and the objects for which it was adopted.

It is an admitted maxim, in the ordinary course of the administration of justice, that a preamble of a statute is a key to open the minds of the makers, as to the mischiefs which are to be remedied, and the objects which are to be accomplished, by the provisions of the statute. It is founded upon the universal principle of interpretation that the will and intention of the legislature is to be regarded and followed.

In a fundamental law, or constitution of government, great attention should be given to the intention of the framers as stated in the preamble. And accordingly we find that the preamble of the Constitution has been constantly referred to by statesmen and jurists, to aid them in the exposition of its provisions.

14. The preamble cannot be resorted to in order to enlarge the powers confided to the general government, or any of its departments.

It cannot confer any power *per se*, in itself; it can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power; when otherwise withdrawn from the Constitution. Its true office is to expound the nature, extent, and application of the powers actually conferred by the Constitution; and not substantially to create them. For example, the preamble declares one object to be "to promote the common defence." No one can doubt that this does not enlarge the powers of Congress to pass any measures that they may deem useful for the common defence. But where the terms of a given power may admit of different constructions; if one would promote and the other defeat the common defence, the former ought, on the soundest principles of interpretation, to be adopted. (j)

Amendments to the Constitution.

15. Does the Constitution of the United States provide how amendments may be made to it?

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments; which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State shall, without its consent, be deprived of its equal suffrage in the Senate." *Cons. of U. S. Art. V.*

(j) 1 Story on the Cons., p. 445.

16. There have been twelve amendments incorporated, in the manner prescribed by the above provision, into the federal Constitution, since its adoption. They are treated of, under the proper heads, in this work. See Part I, chap. V. VI. VII.

These amendments were made soon after the adoption of the Constitution. Objections to it had been urged, on the ground that it contained no formal Bill or Declaration of Rights; (*k*) and on this account principally the amendments were adopted. The first ten amendments may be regarded as a Bill of Rights. There have been various other amendments, at different times, proposed by Congress, and considered by the Legislatures of the States; but they were not ratified by the requisite number of States.

17. It is a general principle of liberty that the people have the right to alter, reform or abolish their government, whenever they deem it necessary. (*l*)

It is one of the great excellencies of the federal Constitution, that it provides in itself a mode for its amendment, in which such an object may be attained peaceably and readily, and yet not without proper care and deliberation.

(*k*) See Part I. chap. iii, and Part I. chap. vii.

(*l*) See Part II, chap. iii, head "Supreme power of the people." The basis of our political systems is the right of the people to make and alter their Constitutions of government.—WASHINGTON'S FAREWELL ADDRESS.

CHAPTER III.

OF THE CONGRESS OF THE UNITED STATES.

1. THE legislative power of the general government is vested in the Congress of the United States.

By the federal Constitution, all the legislative powers therein granted are vested in the Congress of the United States, consisting of the Senate and House of Representatives. *Art. I. Sect. 1.*

2. The legislative power of a government is the power of making laws; and that branch of a government which has this power is the legislative department of it. A legislature is that body of persons with has the power of making laws for a State. Congress is the national Legislature.

3. The division of the legislature into two separate and independent branches is a wise plan. It is founded on the strongest reasons of policy, and its advantage has been proved by experience.

4. How do the two Houses of Congress act, in relation to each other, in making laws?

In their deliberations and proceedings for the passing of laws, they act separately and independently, having co-ordinate powers; though the assent of both Houses is necessary to the final enactment of a law.

5. Their powers with respect to passing laws are, in general, equal. In regard to some matters they are vested respectively with distinct and exclusive powers. The distinction will be observed in the references hereinafter made to the joint and separate powers of the two Houses.

6. The legislative powers of Congress include the power to originate and propose bills, or drafts or projects of laws, which are conformable to the Constitution, and to discuss, deliberate and decide thereon. The manner of proceeding on bills by Congress, and of finally passing and enacting laws of the United States, is treated of under the proper head in this Chapter.

7. In general, the power to enact laws includes, by implication, the power to repeal former laws. Congress cannot pass a law which may not be repealed by it. One Congress cannot, by its enactment, which becomes a law, bind another Congress, so that the latter cannot repeal the law, or legislate upon subject the matter of it. This is so, except in cases where the federal Constitution expressly

provides otherwise ; as in respect to the salaries of the President of the United States and judges of the courts, which cannot be reduced during their terms of office.

8. Is there a new Congress every second year ?

The members of the House of Representatives and one-third of the Senate being chosen every second year, there is a new Congress by the meeting of both Houses every second year. And the *Congress* for the time being is in fact dissolved, by the operation of the Constitution and laws, on the third day of March in every second year. A new Congress is organized, at its meeting, every second year,

There has been a Congress every two years since the organization of the general government under the federal Constitution. The present Congress, which commenced on the first Monday of December in the year 1856, is the thirty-fourth.

SENATE OF THE UNITED STATES.

9. The Senate of the United States is composed of two Senators from each State, chosen by the Legislature thereof for six years ; and each Senator shall have one vote. *Cons. of U. S. Art. I, Sect. III.*

Each of the Senators from a State acts, in all respects, independently of the other ; exercising his power, and discharging his duties, according to his own judgment and discretion. Each Senator has the right to vote on all questions before the Senate.

10. Vacancies in the Senate of the United States are to be filled in the mode prescribed by the federal Constitution.

“If vacancies in the Senate of the United States happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.” *Cons. of U. S. Art. I, Sect. III, 2.*

It seems, that a Governor of a State cannot in the recess of the Legislature appoint a Senator to fill a vacancy, which has not actually occurred, but which will happen.

11. A State cannot be deprived, without its consent, of its equal representation in the Senate of the United States, by an amendment of the federal Constitution ?

“No State, without its consent, shall be deprived of its equal suffrage in the Senate.” *Cons. of U. S. Art. V.*

12. The executive of a State is the person, (or body of persons), who has the power of executing or carrying into effect the laws of the State, and, in most cases, of making appointments to office ; being generally the governor of the State.

Where the term of a Senator of the United States has expired,

during the session of the Legislature of the State, and the Legislature has not chosen a Senator, can the Governor of the State, during the recess of the Legislature, make the temporary appointment? Where such a vacancy has happened by resignation or otherwise, during the session of the State Legislature and the Legislature has not chosen a Senator, can the Executive of the State, during the recess of the Legislature, appoint a Senator until its next meeting?

13. The federal Constitution provides as to the persons who may be chosen Senators of the United States.

"No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen." *Cons. of U. S*, Art. I, Sect. III, 3.

14. "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators." *Cons. of U. S*, Art. I, Sect. IV.

Congress has passed a law regulating the manner of electing Representatives, (m) but has not made any enactment in regard to the election of Senators.

15. Senators of the United States may be elected either by the joint vote, or by the *concurrent votes* of the two Houses of the Legislature of a State.

It appears to be settled that the Legislature of a State may prescribe either mode for electing its United States Senators. Both modes are used, in different States; though generally the choice of Senators is made by a concurrent vote.

On a joint vote, the members of both branches of the Legislature assemble together, and give a united vote numerically; on a concurrent vote, each branch gives a separate and independent vote.

The executive of a State has not the right of a negative upon such elections by the Legislature, as in cases where the State constitution gives him a qualified negative upon the laws.

Where the members of the Legislature of a State are assembled together, in order to elect a United States Senator by a joint vote, they constitute a convention for that purpose.

Such convention may meet at any time, and on its own adjournment, during the session of the Legislature, in conformity with the law. It seems, it cannot meet and act at a time when the Legislature is not in session.

The mode and time of such election are, in general, regulated by a law of the State. See Part II., chap. IV.

(m) See in this chap., par. 46-50.

16. The Senate of the United States consists, at the present time, of sixty-two members, representing the thirty-one States of the Union.

17. Each State has thus its equal voice and equal rights in the Senate of the United States, without regard to a difference of population, wealth, or territory; and is represented therein as a sovereign and independent community; each State being sovereign and independent in its proper sphere.

The Senate is, then, constituted upon the principle of *equal* representation, in the government, of all the States. The States are thus represented in their political capacities, and as such made active members of the Union.

18. The Senators are elected, one-third of their whole number every two years.

Immediately upon the first election, they were divided, as directed by the federal Constitution, into three classes, the seats of the first class to be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one-third of the Senate is chosen every second year.

On the admission of a new State into the Union, the two Senators first elected from it are assigned each to one of these classes. It is generally done by lot.

This classification is in order that the terms of service of the Senators from each State may expire at different periods, and that there may not be a vacancy at the same time in the seats of both Senators from the same State.

19. The term of office of a Senator of the United States is six years. The regular term is six years from the fourth day of March after his election. When a vacancy occurs, a Senator is elected for the unexpired period of the term. A person is re-eligible indefinitely as Senator of the United States.

20. The Vice President of the United States is President of the Senate.

“The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.” *Cons. of U. S*, Art. I, Sect. III, 4.

21. In presiding over the Senate, the Vice President of the United States does not vote, except that he gives a casting vote in case of a tie in the votes of the Senators. He never joins in their deliberations or debates. The appointment of the committees of the Senate is either by him or by the election of the Senators, as determined by the rules of proceeding or resolution of the Senate.

It appears that the Vice President, presiding over the Senate, has a right to give a casting vote, when the votes of the Senators

are equally divided, on nominations to office by the President, on executive business, and on elections for officers of the Senate, as well as on legislative affairs. The late practice, justified by former precedents, has been in accordance with this view of the constitutional right and duty of that officer.

"The Senate shall choose a President of the Senate *pro tempore*, in the absence of the Vice President of the United States, or when he shall exercise the office of President of the United States." *Cons. of U. S., Art. I, Sect. III, 5.*

Senators of the United States are sometimes called *federal* Senators, as distinguished from Senators in the legislature of a State.⁽ⁿ⁾

22. The Senate of the United States may sit when Congress is not in session, for the transaction of executive business. Deliberating and acting on treaties and nominations to office by the President is called its executive business.

23. The Senate is organized when a quorum of its members has met agreeably to the Constitution, having taken the requisite oath or affirmation of office; with its proper President and other officers.

Appointments to office.

24. The Senate is vested with an important power in regard to the appointing of officers of the general government.

The President of the United States "shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they may think proper, in the President alone, in the courts of law, or in the heads of department." *Cons. of U. S., Art. II, Sect. II., 2.*

When the Senate advises and consents to an appointment to office, it is said to confirm the nomination; otherwise, to reject it.

25. The Senate can give its advice and consent to appointments to office only on such nominations, and after the nominations are made and laid before it, by the President. It cannot act in reference to appointments to office previously to nominations therefor by the President.

The subject of the nomination and appointment of officers of the general government is more particularly considered in a subsequent chapter of the work. (o)

(n) See above, chap. I, 23, 24.

(o) See Part I, chap. VIII.

Impeachments.

26. The power of trying impeachments of officers of the general government is vested exclusively in the Senate of the United States.

“The Senate shall have the sole power of trying all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States shall be tried, the Chief Justice of the United States shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.” *Cons. of U. S. , Art. I, Sect. III, 6.*

27. When sitting for the purpose of trying impeachments, the Senate is a court of justice. In such cases, it is governed by, and the proceedings before it are conducted agreeably to, the principles and rules of law under the Constitution.

28. An impeachment is a legal accusation, before a competent tribunal, against a public officer for a crime or misdemeanor, committed in the exercise of his office.

29. The federal Constitution prescribes what officers may be impeached before the Senate of the United States.

“The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.” *Cons. of U.S. Art. II. Sect. IV.*

30. By *civil* officers, in this provision of the Constitution, are meant all public officers of the general government, except military and naval officers, and members of Congress.

31. It has been adjudged that the term officers, as used in the Constitution, does not include members of Congress. Members of Congress may be punished for disorderly behaviour or contempt, or may be expelled by the Houses to which they respectively belong. (p) Military and naval officers are punishable by courts martial, according to the rules established by Congress for the regulation of the army and navy.

32. The persons liable to impeachment before the Senate of the United States are those who hold or have held public offices under the United States; and all executive and judicial officers of the United States are included.

33. Such an impeachment can be preferred only by the House of Representatives of the United States.

The House of Representatives has the sole power of impeachment, to be tried by the Senate. *Cons. of U.S. Art. I, Sect. II. 5.*

The House of Representatives only has the power to determine whether such an impeachment shall be made, or preferred, to present it to the Senate, and, as the accusing party, to conduct the prosecution of it before that tribunal.

(p) See further on in this chapter.

34. The judgment or punishment in case of conviction, on any such impeachment is limited by the Constitution.

“Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of trust or profit under the United States; but the party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.” *Cons. of U. S. Art. I. Sect. III. 7.*

35. When upon conviction on an impeachment before the Senate, the judgment has been removal from office, and disqualification to hold office, the pardon of the President of the United States cannot restore the competency of the offender.

And though the President may grant a pardon for the same act, in case of a conviction in the common course of law, the pardon can only extend to the punishment imposed by the ordinary court, without affecting the sentence of the Senate on the impeachment.

36. The federal constitution declares for what offences such impeachments may be made.

The offences for which the officers described in the Constitution may be impeached, are such as they may commit officially, or by color of office; being neglect of duty, violations of public trust, acts contrary to the Constitution and laws, and offences against the general government; which are included in the offences of “treason, bribery, and other high crimes and misdemeanors.” The treason mentioned is treason against the government of the Union.

These offences are denominated political offences, or “high crimes and misdemeanors,” as their effects and consequences are immediately injurious to the body politic or Union itself.

All officers are liable to be indicted and punished, under the criminal law, for wilful neglect of duty and misbehaviour in office; and for bribery and other corruption in office. And they may be prosecuted for such offences before the ordinary tribunals of justice, in the due course of law, notwithstanding any impeachment against them, and either before or after an impeachment.

37. The Senate of the United States, when organized for the purpose of trying an impeachment, is a judicial tribunal or court of justice, and is called “The court for the trial of impeachments.”

A quorum of the Senate, or a majority of the Senators, is necessary to constitute the Court, and is sufficient for that purpose; although no conviction can take place without the concurrence of two-thirds of the members present.

The Vice President of the United States, being President of the Senate, presides in the Court, when present; except when an impeachment against the President of the United States is tried, on which occasion the Chief Justice of the United States presides. It

seems that the Vice President ought not, in such a case, to sit at all in the Court.

An impeachment is preferred to the Senate by "Articles of Impeachment," which is the written accusation against the party impeached, containing the formal specification of the charge.

Proceedings for the impeachment of a federal officer are instituted, in the first place, by petition or memorial, making the complaint, and setting out the alleged offence, to the House of Representatives of the United States; or by its resolution.

If the House of Representatives determines, after investigation, to prefer an impeachment, it causes Articles of Impeachment to be drawn up, and appoints a committee of its number to act as its Managers in the case. These Managers prefer the Articles to the Senate, and afterwards prosecute the case, on the trial, on the part of the House of Representatives.

The Articles of Impeachment are preferred by the House of Representatives in the name of the United States of America, and charge the alleged offence as committed against them; and from the time when the articles are preferred, the case is of the nature of a criminal prosecution, before a court of justice.

The Senate causes the accused person to be summoned, by its sergeant-at-arms, or other executive officer, to appear before it, in order to answer the charge. An answer or plea is received. He is then called the *respondent*. And, if necessary, a trial is ordered to be had by the Senate. All proper process, in relation to the accused party, or for summoning and compelling the attendance of witnesses, on the part of either the defence or prosecution, is issued by the Senate, and served by its officers.

A trial on impeachment before the Senate is conducted as an ordinary trial in the common law courts. It is held in public; the House of Representatives being present as the prosecutors, and the managers prosecuting on their behalf; and the *respondent*, or accused party, being entitled to be heard by himself or counsel. It is not necessary that the accused party should be personally present, as the trial may proceed in his absence, if he have had due notice to appear.

The same general rules of evidence prevail on the trial of an impeachment as govern a court of justice in an ordinary case.

The consultations of the members of the Senate, on all questions and points that arise in the course of the trial, are had in private; but their determinations thereon are given by their votes severally in public. So, when the examination and hearing of the case are completed, the Senators deliberate in private on the question of the guilt or innocence of the accused; but they give their votes thereon in public, and judgment or sentence is pronounced accordingly, by their presiding officer.

“The Constitution does not declare that the Vice President shall be restricted on the trial of impeachments, as in legislative proceedings, to a casting vote; and as he is constituted one of the judges of the court, by being appointed to preside without any restriction, it seems to follow that he is entitled to vote in the same manner as the other judges. The same reasoning would establish a similar right in the Chief Justice of the United States, when presiding on the trial of the President.”(r)

Power of the Senate as to treaties.

38. The Senate is vested with a very important power with respect to treaties.

“The President of the United States shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate concur.” *Cons. of U. S. Art. II, Sect. II. 2.*

The federal Constitution provides that treaties so made shall be the supreme law of the land.

“All treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.” *Cons. of U. S. Art. VI. 2.*

The other provisions of the federal Constitution, with respect to treaties, are given under appropriate heads in this work, with some observations defining the term, and in reference to the power of making treaties, the manner of negotiating them, and their effect.(q)

OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

Election of members thereof. Its organization and officers.

39. “The House of Representatives of the United States shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.” *Cons. of U. S. Art. I, Sect. II.*

The members of this branch of the national Legislature are elected immediately by the people, in the manner directed by the laws of the States respectively, made in conformity with the provisions of the federal Constitution and the laws of the United States.

40. The right of suffrage, in electing them, is not wholly de-

(r) Duer's Cons. Jurisprudence, p. 93.

(q) See the General Index.

terminated by the federal Constitution, nor positively fixed to be uniform in all the States, upon a principle common to all; but the constitutional provision is suited to the existing diversities in the several States in regard to the qualifications of voters of members of their Legislatures respectively; (*r*) and is, in effect, it seems, the extension of the right, for the most part, according to the largest liberty.

41. The federal Constitution declares, who may be a member of the House of Representatives of the United States.

“No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.” *Cons. of U. S. Art. I. Sect. II. 2.*

A person having these qualifications may be elected a Representative; and it seems no other qualification can be required by any State.

42. The Representatives are apportioned among the several States, according to the number of their inhabitants respectively, to be computed in the manner prescribed by the Constitution.

“Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.” *Cons. of U. S. Art. I. Sect. II. 3.*

43. By “all other persons,” as mentioned in this provision, are meant, or among them are included, slaves, “three-fifths” of whom are to be computed in making up the numbers of the States respectively, according to which the Representatives shall be apportioned among them. And this rule applies, also, to the apportionment of direct taxes.

44. The House of Representatives is, then, constituted on the principle of *proportional* representation; every district or territorial division of the Union having a representation proportional to its population.

This method of determining the number of the population of a State is called the *federal* method, population so computed *federal* population, being according to the federal Constitution.

The manner of computing the number of inhabitants in a State, according to which the number of its Representatives in Congress is fixed, is different in the slave-holding States from what it is in the other States. In a slave-holding State the number of white

(*r*) See Part II. chap. iv.

persons, and three-fifths of the slaves, make the number, which determines how many Representatives it may have, in the apportionment of them among the several States.

The citizens of the slave-holding States have more Representatives in Congress than an equal number of white persons in the other States. As Representatives and direct taxes are apportioned among the States by the same rule, the slave-holding States are liable to a greater tax in proportion, when *direct* taxes may be laid by Congress.

45. The federal Constitution provides a limitation to the number of Representatives, in directing the manner of their appointment.

“The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative.” *Cons. of U. S. Art. I. Sect. II. 3.*

46. An apportionment of Representatives among the several States is required by the federal Constitution to be made at certain periods.

An enumeration, or census, of the inhabitants of the United States, as directed by Act of Congress, is to be made every ten years, and a new apportionment had thereon, according to the relative population of the States. *Cons. of U. S. Art. I. Sect. II. 3.* The first enumeration was made in 1790.

47. “The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may make or alter such regulations, except as to the place of choosing Senators.” *Cons. of U. S. Art. I. Sect. IV. 1.*

48. Vacancies among the Representatives are to be filled in the manner directed by the federal Constitution.

“When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancy.”(s) *Cons. of U. S. Art. I. Sect. II. 5.*

A Representative is thus elected for the unexpired portion of the term which had become vacant.

49. As to the mode of electing Representatives of the United States, the course has generally been, that after the apportionment of Representatives among the several States, by Act of Congress, the Legislature of each State has prescribed the manner of electing the number of Representatives to which it was entitled, either by *general ticket* for the whole State, or by *districts*, each district electing one or more Representatives, according to its population, enumerated by the law of the State.

50. The mode of electing Representatives in Congress, at the present time, (1856,) is fixed by Act of Congress.

(s) See, above, in this chapter, 12.

By the Act of Congress, in 1842, making the apportionment of Representatives among the several States, it was directed that the election of the Representatives in each State should be by *districts*, which is the present mode.

51. The number of Representatives in Congress, as fixed by the last apportionment, in 1850, is two hundred and thirty-three. To this number is now to be added one Representative from the State of California.

The apportionment of Representatives is made by dividing the aggregate of the federal population of the United States by the whole number of Representatives, the quotient being the ratio of apportionment; and the federal population of each State being divided by that ratio, the quotient gives the representation allowed to the particular State; and where the number of Representatives so ascertained is not sufficient, in consequence of fractions of population in the several States, there being assigned an additional number to each of so many States having the largest fractions, for its fraction, as may be necessary to make the whole number of Representatives in Congress.

52. The present ratio on which the Representatives are apportioned among the several States, by Act of Congress, is one Representative to every 93,423 inhabitants, and one additional Representative for every remaining fraction exceeding the half of that ratio. (t)

53. The right of choosing its own Speaker, and other officers, is vested in the House of Representatives by the Constitution.

“The House of Representatives shall choose their Speaker, and other officers.” *Cons. of U. S. Art. I. Sect. II. 5.*

54. The Speaker is the presiding officer of the House, appointed to preserve order during its sittings, and to see that its business is conducted according to the rules of proceeding. He is generally authorized to appoint the standing and select Committees of the House, and to perform other duties pertaining to its transactions; and he authenticates, by his signature, the bills, resolutions and acts of the House.

The House elects one of its own members to be the Speaker. His right to vote is regulated by the rules of proceeding. By the present rules it is provided that in all elections by the House the Speaker shall vote; in other cases he shall not vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal, and in case of such equal division, the question shall be lost. His vote in case of an equal division of the House is called his *casting* vote. It must be implied that

(t) See a table showing the number of Representatives from each State, its population, federal number, &c., in the Appendix, note C.

such casting vote can be given only in cases in which a majority of votes is sufficient for a decision.

The Speaker is, in general, not allowed to take part in the debate. He may do so, however, by leave of the House, another person being assigned to the chair; and by the standing rules of the House, in certain stages of the progress of a bill or resolution, when he is not presiding, he may participate in the deliberations, debates, and proceedings, as any other member. Some observations are made, which have a bearing on this subject, under another head in this work, in reference to the mode of proceeding in passing a law in the two Houses of Congress. (*u*)

55. The Speaker and other officers of the House are elected at the commencement of every new Congress, to continue for the term of that Congress; although they may be removed from office at the pleasure of the House.

The officers of the House, besides the Speaker, are a sergeant-at-arms, a door-keeper, and their assistants.

56. There is a delegate to Congress from each Territorial government of the United States. A delegate chosen by the Legislature of each Territorial government has a seat in the House of Representatives, with the privilege of taking a part in debate, but without the right to vote.

57. The election of members of the House of Representatives of the United States, is not held at the same time in all the States. Congress not having fixed the time of holding such election, it is held at different times in the several States, agreeably to the laws thereof respectively.

58. *Term of office.* The term of office of a Representative in Congress is two years.

The term of every Representative expires with the third day of March of the second year of the Congress. In many of the States the Representatives are elected previously to the fourth day of March of the first year of every Congress, to serve for two years; but in some of the States, by the laws thereof respectively, they are elected subsequently to that day. In Pennsylvania, Representatives are elected to serve for two years, as has been stated. A person elected to supply a vacancy serves for the unexpired part of the term of the Representative, in whose place he was elected.

A person may be re-elected a Representative in Congress any number of times indefinitely.

59. The House of Representatives is organized, when a quorum of its members has met, agreeably to the Constitution, having taken the requisite oath or affirmation of office, with its Speaker and other officers.

(*u*) See, in this chapter, par. 198-9.

Each Representative has a right to a vote on all questions; except in case of an election of President of the United States by the House, when all the Representatives from a State can cast only one vote.

OF THE MEMBERS OF CONGRESS.

Oath of office.

60. The oath of office of a member of Congress is prescribed by the federal Constitution.

"The Senators and Representatives before mentioned,"—"shall be bound by oath or affirmation, to support this Constitution?" *Cons. of U. S. Art. VI. 3.*

61. The oath or affirmation is administered to the members by the Speaker of the House, or President of the Senate respectively, at the commencement of a new Congress, or to a member on taking his seat in either House. There is no other oath of office required to be taken by a member of Congress.

Privilege from arrest or civil suit.

62. Members of Congress have, under the Constitution, certain privileges from arrest.

The Senators and Representatives "shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same." *Cons. of U. S. Art. I. Sect. VI. 1.*

63. They have, also, privileges at common law, in regard to civil suits.

They are privileged from arrest, summons, citation, or other civil process, during their attendance on the public business, confided to them. It has been so adjudged by the courts of justice.*

Freedom of debate.

64. Members of Congress have certain constitutional privileges as to speeches or debates in the Houses respectively.

"For any speech or debate in either House they shall not be questioned in any other place." *Cons. of U. S., Art. I., Sect. VI., 1.*

65. The meaning of the provision is, that for words uttered in debate, or in the course of business, in Congress, they shall not be liable to any prosecution, civil suit, or proceeding at law; be

* 4 Dallas' Reports, p. 107, 371.

“questioned” in any judicial case. Its object is, to secure freedom of opinion and speech in the deliberations and transactions of Congress.

The debates in Congress have, for many years, been reported and published by the order of Congress, and at the public expense.

Incompatibility of offices.

66. What is the provision of the federal Constitution as to members of Congress holding offices under the authority of the United States?

“No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.” *Cons. of U. S., Art. I., Sect. VI., 2.*

67. It is requisite that a member of Congress should resign his seat in Congress before he can be appointed to an office under the United States. And an officer under the United States must resign in order to be enabled to become a member of Congress.

The prohibition in this clause of the Constitution is not considered to extend to military officers.

It is designed by this provision to preserve the independence and impartiality of the members of Congress, and their freedom, in the discharge of their duties, from any improper influence of any other department of the government.

68. Members of Congress cannot at the same time be members of the Legislature of any State. It is generally so provided by the constitution or laws of each State. (*v*)

69. Nor can a member of Congress hold any civil office in State.

It is generally provided by the constitution and laws of each State that no member of Congress, nor any person holding or exercising any office or appointment under the United States, shall at the same time hold any office in the State. (§)

Compensation of members of Congress.

70. The federal Constitution provides for the compensation of members of Congress.

“The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.” *Cons. of the U. S., Art. I., Sect. VI.*

(*v*) See Part II., chap. VII.

(§) See Part II., chap. IV.

The compensation of members of Congress, by the Act of Congress of the 22d of January, 1818, was eight dollars a day to each member while attending the session of Congress, and eight dollars for every twenty miles of estimated distance, by the most usual road from his place of residence to the seat of government, at the commencement and end of every session of Congress; each member of the Senate to receive the same daily allowance and pay, for his attendance on and travelling to and from every meeting of the Senate in the recess of Congress; the President of the Senate *pro tempore*, and the Speaker of the House, to receive each eight dollars for every day's attendance on their respective Houses, in addition to their compensation as members of Congress. By an Act of Congress, of the 16th of August, 1856, the compensation of a member of Congress is three thousand dollars a year, exclusive of mileage allowed by the former Act; deduction to be made for his voluntary absence, except in case of sickness of himself or a member of his family.

Interest in public contracts.

71. By an Act of Congress it is provided that no member of Congress shall hold or enjoy any contract or agreement made in behalf of the United States, the violation of the Act to be a high misdemeanor, and the contract to be void; and a penalty is imposed upon any officer making such contract with a member of Congress.

It has been a rule of the House of Representatives that no member shall vote on any question in the event of which he is immediately and particularly interested.

TIME OF MEETING OF CONGRESS, AND ITS ADJOURNMENTS.

72. Congress is required, by the Constitution, to meet at least once every year.

"The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day." *Cons. of U. S., Art. I., Sect. IV., 2.*

73. The President of the United States has power to convene Congress, at any other time.

"The President may, on extraordinary occasions, convene both Houses of Congress, or either of them." *Cons. of U. S., Art. II., Sect. III.*

74. The first session of a new Congress cannot be held, nor its action commence, until the day fixed by the Constitution or appointed by law, unless the President, in the exercise of his constitutional power, sooner convene it, on some extraordinary occasion. After being thus assembled, Congress may hold sessions, at any

time, within its term, on its own adjournment, by the joint resolution of both Houses.

It is provided by Act of Congress that when, on account of the prevalence of a contagious disease, or for other causes, it would be dangerous to the health of the members to meet at the place to which Congress shall stand adjourned, the President may, by proclamation, convene Congress at such place as he may deem proper.

The Constitution does not determine at what place Congress shall meet. By Act of Congress, the seat of government was fixed in the District of Columbia, and it was provided that buildings should be erected there for the accommodation of Congress.

Adjournment of Congress.

75. Congress may adjourn, by the joint resolution of both Houses, at any time. The assent of the President to their adjournment is not requisite.

It may thus adjourn to any time not beyond the day of their annual meeting as fixed by the Constitution.

76. As to the power of either House to adjourn separately ;

“Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.” *Cons. of U. S , Art. I., Sect. V., 4.*

The President of the United States may adjourn Congress, in certain cases.

“In case of disagreement between the two Houses with respect to the time of adjournment, the President may adjourn them to such time as he shall think proper.” *Cons. of U. S , Art. II , Sect. III.*

The President cannot adjourn Congress to any period beyond the usual time of its meeting.

SEPARATE DUTIES AND POWERS OF EACH HOUSE.

As to the election and qualifications of its members.

77. Each House has, by the Constitution, the right to determine and judge as to the election and qualifications of its own members.

“Each House shall be the judge of the election, returns, and qualifications of its own members.” *Cons. of U. S , Art. I , Sect. V , 1.*

It is implied by this provision that each House shall only be the judge whether the election of any person as a member thereof has been made and returned conformably to the law, and whether he possesses the qualifications required by the Constitution.

78. *Contested* elections, or questions as to the right to seats as members, are thus determined, exclusively of any other jurisdiction or power.

There is an Act of Congress determining the mode of proceeding in order to contest the election of a member of the House of Representatives, and providing for the taking of testimony in the case.

Quorum.

79. The number of either House which shall constitute a quorum, or a sufficient number to do business, is fixed by the Constitution.

“A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.” *Cons. of U. S. Art. I. Sect. V. 1.*

This power is given to a minority of each House, in order that a portion of the members may not prevent the regular action of Congress, or suspend its legislation.

80. Where, on the attendance of a *quorum*, either House has been organized, at a particular sitting, questions before it on all bills, resolutions or orders are, in general, determined by a majority of the members present. A bill, resolution or order, is said to have been *passed* by the House, when on the question being finally taken, according to the rules of the House, a majority of the members present had voted in favor of it. It may be so passed in any case, except when the assent of a greater number is required by the Constitution or the rules of the House. With respect to some matters, the concurrence or approbation of two-thirds is by the Constitution made necessary to the action of the House, or to the passage of a bill or resolution. (*w*)

Election of officers.

81. In general, the Constitution secures to each House the right to elect its own officers.

82. The Vice President of the United States is President of the Senate, by virtue of his office; as to all other officers, each House elects or appoints its own officers.

“The House of Representatives shall choose their Speaker and other officers,” *Cons. of U. S. Art. I. Sect. II. 5.*

“The Senate shall choose their other officers, and also a Presi-

(*w*) *Cons. of U. S. Art. I. sect. III. 6; sect. V. 2; sect. VII. 2, 3; Art. II. sect. II. 2; Art. V.*

dent *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States." *Cons. of U. S. Art. I. Sect. III. 6.*

83. When the Senate is sitting for the purpose of trying an impeachment against the President of the United States, the Chief Justice presides. *Cons. of U. S. Art. I. Sect. III. 6.*

84. The usual officers of the Houses of Congress are a President of the Senate, a Speaker of the House of Representatives, and a Secretary or Clerk, a Sergeant-at-arms, and a Door-keeper, with their assistants, of each House.

85. A sergeant-at-arms is the executive and ministerial officer of either House, authorized to enforce its orders, serve its process, and perform various duties assigned to him by the rules of proceeding.

The election of these officers, and their powers and duties, are referred to more particularly above, under the heads of "Senate" and "House of Representatives."

Rules of proceeding.

86. "Each House may determine the rules of its proceeding." *Cons. of U. S. Art. I. Sect. V. 2.(y)*

It is implied that these rules shall be consistent with the provisions of the federal Constitution.

A system of rules is adopted by each House at the commencement of every Congress, to be in force during its continuance; though they may be altered or repealed by the House at any time.

By a rule of the House of Representatives, no member is allowed to vote on any question in the event of which he is immediately and particularly interested. (x)

87. Does each House *sit with open doors*?

There is no express provision in the Constitution of the United States on the subject. Generally the proceedings and debates in each House are conducted in public; but either House may, upon any occasion, determine to sit with closed doors; as it is the practice to do, in either House, when acting on matters requiring secrecy, and in the Senate, when deliberating on treaties, nominations to office by the President, and executive business.

Journal.

"Each House shall keep a journal of its proceedings, and, from time to time, publish the same, except such parts as may in their judgment require secrecy." *Cons. of U. S. Art. I. Sect. V. 3.*

The journal of each House is drawn up by its Secretary or Clerk,

(y) As to the method of enacting laws, see further on, Chap. iii.

(x) See in this chapter § 71.

under the supervision of its presiding officer, and subject to correction by the House.

The records of the proceedings of the Senate, in executive session, and when acting with closed doors, are accessible only to the President of the United States and to the officers and members of the Senate; and no extract from the records can be otherwise furnished, except by the special order of the Senate.

The journals of both Houses of Congress, except those portions of them which relate to the executive business of the Senate, or to proceedings with closed doors, and not directed to be made public, have been regularly printed and published. It is generally ordered by each House that a printed copy of its journal be furnished to the Executive and each branch of the Legislature of every State. For some years, the debates in each House have been reported and published by order of Congress at the public expense.

Yeas and nays.

89. "The yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal." *Cons. of U. S. Art. I. Sect. V. 3.*

90. The yeas and nays are the votes of the members severally; the vote of each member with his name to be recorded on the journal of the House.

A member of Congress, in either House, can only vote in person, and not by proxy.

Punishment of members.

91. "Each House may punish its members for disorderly behaviour." *Cons. of U. S. Art. I. Sect. V. 2.*

See the head "Contempt," below.

Expulsion of members.

92. There is a provision in the federal Constitution as to the expulsion of members of Congress.

"Each House may, with the concurrence of two-thirds, expel a member." *Art. I. Sect. V. 2.*

Contempt of either House of Congress.

93. Each House of Congress has power to punish for contempt.

There is no power expressly given to either House of Congress to punish for contempts, except when committed by their own members; but each House has the implied power, as necessary for the performance of its duties, to imprison for contempt persons not members. The power to punish extends no further than to arrest

and imprisonment, and that can continue no longer than the power which imprisons. The imprisonment will terminate with the adjournment or dissolution of Congress.

Adjournment.

94. The federal Constitution contains certain provisions as to the power of either House to adjourn separately.

“Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.” *Cons. of U. S. Art. I. Sect. V. 4.*

A smaller number than a majority of each House may adjourn from day to day. *Cons. of U. S. Art. I. Sect. V. 1.*

LAWS FOR RAISING REVENUE.

95. A special power, in respect to the raising of revenue, is vested, by the federal Constitution, expressly and exclusively in the House of Representatives.

“All bills for raising revenue must originate in the House of Representatives; but the Senate may propose or concur with amendments, as in other cases.” *Cons. of U. S. Art. I. Sect. VII. 1.*

This is the only instance in which legislative power is vested in one House of Congress and not in the other.

It is generally considered that this clause refers to those bills only by which taxes are levied, and revenue is directly raised, and not to such bills as may merely have the incidental effect of increasing the revenue.

OF THE DUTIES AND POWERS OF CONGRESS.

96. The powers of Congress are limited.

Congress has no other powers than those expressly granted in the federal Constitution, and such as are incidental thereto.

97. There is a general limitation, in the federal Constitution, of the powers of Congress.

“The powers not delegated to the United States in this Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” *Cons. of U. S. Amendments, Art. X.*

The terms of the Constitution making Congress a legislative body, and vesting in it only the “powers therein granted,” imply that no others can be exercised by it.

“All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” *Cons. of U. S. Art. I. Sect. I.*

The express grant of power to Congress in certain enumerated cases implies that its powers are limited.

“The Constitution declares that the powers of Congress shall extend to certain enumerated cases. The specification of particulars evidently excludes all pretensions to a general legislative authority; because an affirmative grant of special powers would be absurd, as well as useless, if a general authority were intended.” (z)

98. There are certain powers which are expressly, by the federal Constitution, prohibited to Congress. The subject of these prohibitions is treated of in a subsequent chapter of this work. (a)

99. Congress cannot exercise a power contrary to any provision of the federal Constitution.

100. The authority of Congress in the exercise of those powers which are vested in it by the federal Constitution is full and complete.

Every power vested by Congress in the Constitution is complete in itself, and may be exercised to its utmost extent, without any limitations except such as are prescribed by the Constitution. The authority of Congress, though limited to specific objects, is full and absolute in regard to those objects, under the Constitution.

Division of the powers of Congress.

101. The powers of Congress may be divided into those that are *enumerated* or express, and those that are *incidental*. They are also called either *direct* or *implied*. (b)

102. The *incidental* powers of Congress are those which are necessary to the powers expressly granted, by the federal Constitution, to Congress.

The incidental powers are to be considered as included in the express powers, and equally delegated with them, by the Constitution, to Congress or the general government. All the powers of the government are, in a proper sense, enumerated powers.

103. There is a provision in the federal Constitution which recognizes, and applies to, the incidental powers of Congress.

“The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.” *Cons of U. S. Art. I. Sect. VIII. 18.*

104. The import of this clause is, that Congress shall have all the incidental and instrumental powers necessary and proper to carry into execution all the express powers.

(z) Story on the Cons. p. 434. (a) See Part I. chap. IV.

(b) See Part I. chap. I.

The term "necessary" here is not to be considered as equivalent to the terms "*absolutely and indispensably necessary*;" and as excluding all means for carrying into effect an enumerated power, except such as without which the grant of the power would be nugatory; but to mean the same as *needful, requisite, essential, conducive to*.

Whenever a question arises concerning the constitutionality of a particular power, the first question is, whether the power be "expressed" in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it.

With respect to any proposed measure, "let the end be within the scope of the Constitution; and all means which are appropriate, which are plainly adapted to the end, and which are not prohibited, but which are consistent with the letter and spirit of the instrument, are constitutional." (c)

"There is not in the whole of the federal Constitution a grant of powers, which does not draw after it others, not expressed, but vital to their exercise; not substantive and independent, indeed, but auxiliary and subordinate. There is no phrase in it which, as the Articles of Confederation did, excludes incidental and implied powers, and which requires that every thing granted shall be expressly and minutely described. Even the tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' (which had been contained in the articles of Confederation,) and declares only that 'the powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people;' thus leaving the question, whether a particular power, which may become the subject of contest, has been delegated to the general government, or prohibited to the States, to depend upon a fair construction of the whole instrument.

"The nature of a Constitution requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients, which compose those objects, be deduced from the nature of those objects themselves. That this idea was entertained by the framers of the American Constitution, is to be inferred not only from the nature of the instrument, but from its language. Why, else, were some of the limitations, found in the ninth section of the first article, introduced? It is, also, in some degree, warranted, by their having omitted to use any restrictive

term, which might prevent its receiving a fair and just interpretation." (d)

The power granted to Congress by this clause of the Constitution, (Art. I. Sect. VIII. 18,) is a direct and express power, to carry into effect the powers conferred upon it, and enumerated in the Constitution; to execute the laws it was authorized to pass. It is to be construed a power of execution. It was not intended by the provision to extend the powers of Congress to any subject matter not enumerated in the Constitution.

105. These *incidental, implied* powers are derived from the meaning of the Constitution, ascertained by its express words, or their necessary implication; taking the whole together. They are not properly *constructive* powers, so called, taken from a mere construction of the Constitution; such "an enlarged construction as would extend its words beyond their natural and obvious import," or to be formed from matter extraneous.

106. By Art. IV. sect. III. 2, of the federal Constitution, it is provided; "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States or of any particular State." An eminent jurist and writer has stated his opinion to be, that this latter clause has a most important bearing upon the interpretation of the Constitution in general; referring to all the *powers* and property of the United States, under the Constitution, and to the powers reserved to the States severally; and that the declaration, "nothing contained in this Constitution shall be construed, &c.," prohibits any interpretation of the Constitution by which it shall operate to the prejudice of the general government, or of any particular State, by construction. (e)

107. There are what are called *resulting* powers; a class of implied or incidental powers, arising from the aggregate powers of the general government.

As instances, the United States as a sovereignty is entitled to sue; so, in their political capacity, they have a right to enter into a contract; though there is no express provision therefor in the federal Constitution; for these are natural incidents resulting from the sovereignty and character of the national government, so far as they are appropriate to any of the ends of government, and within the range of its powers.

108. The powers conferred, by the Constitution, on the Congress or the general government, may be either *exclusive* or *concurrent*. (f)

(d) 1 Story on the Cons. p. 418. (e) Baldwin's Cons. Views, pp. 102-4.

(f) See Part I. chap. I.

109. The mere grant in the federal Constitution of a power to the general government, or to Congress, does not imply that it is to be *exclusive*, and that it is prohibited to the States to exercise the same power.

The same power exists *concurrently* in the several States, unless when the federal Constitution has expressly in terms given an exclusive power to Congress, or the general government, or the exercise of a like power is prohibited to the States severally, or there is a direct repugnancy and incompatibility in the exercise of it by the States severally.

110. When Congress, in the exercise of a power existing in it concurrently with the States, passes a law, any State law contrary to it is invalid.

The law of Congress, in such a case, is paramount, and the State law unconstitutional and void, so far as its provisions are different therefrom.

111. In the case of a concurrent power, in Congress, the several States may legislate on the subject, in the absence of any law of Congress thereon.

112. If Congress exercises a power which exists in it concurrently with the several States, a State cannot legislate on the subject, in a case where, from the nature of the subject, such legislation must be inconsistent with the discretionary exercise of the power by Congress.

113. The several States do not possess a power concurrently with Congress, or the general government, in every case where it is granted to Congress or the general government, but is not given in terms exclusively to Congress, or the general government, or prohibited expressly to the several States. A power given to Congress, or the general government, may be, from its nature, such that it must be exclusive.

114. The powers of Congress relate, in general, to subjects of a national nature. (*g*)

ENUMERATED POWERS OF CONGRESS.

115. The enumerated powers of Congress expressly specified in the Constitution, may be properly considered under the particular heads of the subjects to which they relate.

Revenue. Taxes.

116. The power of Congress as to raising revenue, or laying taxes, is defined by the Constitution.

“The Congress shall have power—to lay and collect taxes, duties, imposts and excises, to pay the debts, and to provide for the common defence and general welfare of the United States; but

(*g*) See above, chap. I. par. 29.

all duties, imposts and excises shall be uniform throughout the United States. *Cons. of U. S. Art. I. Sect. VIII. 1.*

117. The words "to pay the debts, and to provide for the common defence, and general welfare," do not constitute a distinct and substantial power. They are connected with the preceding words in the clause, so as to constitute a qualification of them.

The power of taxation only is given by the clause, and it is limited to objects of a national character, "for the common defence and general welfare."^(h)

118. As to the meaning of the terms "imposts and excises;" taxes include every species of what is levied by government; duties are laid upon any kind of commodities generally; "imposts" upon imported articles; and "excises" upon the manufacture, retail or consumption of goods.

119. Taxes may, in general, be divided into *direct* and *indirect* taxes.

Direct taxes are those which are laid directly upon the persons or property of individuals. And it has been adjudged, that under the Constitution of the United States, direct taxes were only of two species—a tax upon the person, which is called a *capitation* tax or *poll* tax, and a tax upon land. Consequently, all taxes not levied upon the person or land are to be treated as indirect taxes.

120. Direct taxes must be apportioned among the several States according to the numbers of their inhabitants respectively.

"No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration, hereinbefore directed to be taken." *Cons. of U. S. Art. I. Sect. IX. 4.*

"Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of *free* persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. *Cons. of U. S. Art. I. Sect. II. 3.*

The computation of numbers, on which is founded the apportionment of direct taxes, is, of course, according to what is called the *federal* method, in reference to the operation of which some observations have been here previously made.⁽ⁱ⁾

121. As to the laying of indirect taxes, it is provided by the Constitution, that "they shall be uniform throughout the United States. *Cons. of U. S., Art. I. Sect. VIII. 1.*

122. Duties on articles imported from foreign countries, called *customs*, or *imposts*, are laid and collected in the following manner in general. By Acts of Congress certain cities or towns are made places or ports of *entry*, and custom houses established

(h) 2 Story on the Cons., p. 357. (i) See 44 above, in this chapter.

thereat, for which collectors and other officers are appointed. At some of these places, all vessels from other countries, and with foreign goods, are obliged to enter, and to have their cargoes unladen; and from some of these places all vessels destined for a foreign port must obtain a clearance. All ships and vessels engaged in foreign commerce, or the coasting trade, that belong to citizens of the United States, are named, measured as to tonnage, and registered or enrolled in the custom houses. These vessels always carry with them papers, signed by the proper officers of the United States, showing what they are, to what port they belong, and whose property they are. When they depart from a port, they must have a certificate of clearance from the proper custom house; and when they return to any port of the United States, from a foreign country, the master of the vessel must make a statement in writing, on oath, of all the property laden on board his vessel. Foreign goods thus imported are liable to pay the duties, imposts or customs, imposed by the Acts of Congress. The captain's statement is called a *manifest*; and contains the names of the persons that send the goods, who are called *consignors*, and the names of the persons to whom they are sent, who are called *consignees*. The consignees appear at the custom-house, and claim the goods consigned to them; make a list of them, and swear to its being conformable to the manifest, and to the loading of the vessel; which is called an *entry*. The amount of the duties on the goods in the vessel being ascertained, the consignees give bonds therefor, with sureties to the United States. When these bonds are given at the custom-house, the proper officer gives to the consignee a written *permit* to receive the goods from the vessel, under the inspection of an officer, whose duty it is to see that the goods agree with the permit. The same course is pursued in case of a vessel belonging to citizens of other countries, arriving here with foreign goods. Violations of the laws on this subject subject the vessel and its loading to condemnation and forfeiture, and are otherwise severely punished on trial, in the courts of the United States. There is a number of officers and agents at the custom-houses required for the enforcement of the revenue laws, and receiving and accounting for the duties collected; who are appointed by the President of the United States, or Secretary of the Treasury. These laws are carried into effect under the direction of the Secretary of the Treasury through his department. See Chap. VIII, head Treasury Department.

Smuggling, or bringing foreign goods into the country secretly and in violation of the revenue laws, for the purpose of avoiding the payment of the duties thereon, is punished with forfeiture of goods, fine and imprisonment.

There are some remarks applicable to this subject under the head which treats of the power of Congress to regulate commerce.

123. A direct tax may be laid by Congress upon property in a District or Territory not represented in Congress. The power is co-extensive with the territory of the United States.

It has been decided by the Supreme Court of the United States, that Congress, in laying a direct tax upon the several States, was not constitutionally bound to extend such tax to the district or territories of the United States; but that it was a matter of discretion. When, however, a direct tax is to be laid on the district or territories, it can be laid only by the rule of apportionment. (*jj*)

124. Congress has, under this power, claimed and exercised authority to lay duties for the purpose of encouraging and protecting articles of domestic manufacture, or produce, as well as for raising revenue on imports.

And such power has been claimed, also, under the power of Congress, "to regulate commerce with foreign nations." The laying by Congress of duties upon goods imported, is called a "tariff."

125. Has Congress authority to establish a national bank?

It is claimed, that Congress has such a power as incidental to the enumerated powers to raise money, to regulate commerce, to coin money and regulate the value thereof, and to provide for the common defence and general welfare.

126. All bills for raising revenue must originate in the House of Representatives; but the Senate may propose or concur with amendments, as in other bills. *Cons. of U. S. Art. I. Sect. VII. 1.*

127. There is a prohibition in the federal Constitution as to Congress laying taxes or duties on exports.

"No tax or duty shall be laid upon articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall any vessels bound to or from one State be obliged to enter, clear, or pay duties in another." *Cons. of U. S. Art. I. Sect. IX. 5, 6.*

128. There is a prohibition in the federal Constitution as to the several States laying taxes or duties on imports or exports.

"No State shall, without the consent of Congress, lay any imposts or duties upon imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties laid by any State on imports and exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision or control of Congress. No State shall, without the consent of Congress, lay any tonnage duty." *Cons. of U. S. Art. I. Sect. X. 2.*

129. The power of Congress to lay and collect taxes, &c., is not exclusive.

It is a power which the States may exercise, except as to duties on imports and exports, concurrently with Congress.

“The language of the Constitution does not, in terms, make it an exclusive power in Congress; the existence of a concurrent power is not incompatible with it by Congress; and the States are not expressly prohibited from using it by the Constitution. A concurrent power, therefore, remains in the States as a part of their original and unsundered sovereignty.” (*k*)

It has been decided that a law of a State, laying a tax on the Bank of the United States, was unconstitutional.

It has been held, also, by the Supreme Court of the United States, that a State had not constitutional authority to tax stock issued for loans to the United States. No State can have authority to tax an instrument of the United States.

130. The federal Constitution directs in what manner only money can be drawn from the treasury of the United States.

“No money shall be drawn from the treasury, but in consequence of appropriations made by law.” *Cons. of U. S. Art. I. Sect. IX. 7.*

131. The provision of the federal Constitution as to the account of the public money is :

“A regular statement and account of the receipts and expenditures of all public monies shall be published, from time to time.” *Art. I. Sect. IX. 7.*

Power to borrow money.

132. As to the power of Congress to borrow money ;

“Congress shall have power to borrow money on the credit of the United States.” *Cons. of U. S. Art. I. Sect. VIII. 2.*

Power to regulate commerce.

133. As to the power of Congress to regulate commerce :

“Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” *Cons. of U. S. Art. I. Sect. VIII. 3.*

134. The term “commerce” here includes navigation and intercourse generally.

135. Commerce with foreign countries may be regulated by treaties, made by the President and Senate of the United States.

“From the nature of this power, in Congress, it must be exclusive.”

“The general power of Congress to regulate commerce is not restricted to the mere buying and selling, or exchanging, of merchandize and commodities, but includes navigation, as well as

commercial intercourse in all its branches, and extends to all vessels by whatsoever force propelled, and to whatsoever purposes applied."

Under this power Acts of Congress have been passed prescribing the requisites to constitute "American vessels," or requiring them to be navigated by "American seamen," or to conform to other regulations.

"The power to regulate commerce, thus understood, extends to every species of commercial intercourse between the United States and foreign nations, and amongst the States of the Union, and the Indian tribes."

The Supreme Court of the United States has decided that, under this provision, Congress cannot interfere with the slave trade between the States. The decision was on the ground that in the Constitution slaves are treated as persons, and not as property; they not being, therefore, the subjects of commerce.*

Commerce with foreign nations.

"The commerce of the United States with foreign nations, is the commerce of the whole Union; and each State and district has a right to participate in it by means of the navigable streams which penetrate the country in all directions, and pass through the interior of almost every State in the Union."

The power of Congress to regulate foreign commerce, must be exercised wherever it exists; and as a foreign voyage may commence and terminate at a port within the same State, this power of Congress may be exercised within a State.

"The power of Congress, then, comprehends navigation within every State in the Union, so far as that navigation may be in any manner connected with "commerce with foreign nations, or among the several States, or with the Indian tribes."

"As the power of regulating commerce reaches the interior of a State, and may be there exercised, Congress has a right not only to authorize importations, but to authorize the importer to sell.

"An Act of a State Legislature, requiring wholesale importers and sellers of foreign goods to obtain a license from the State, and to pay a sum of money for the privilege of selling, was consequently held to be void, as repugnant not only to that provision of the Constitution which restricts a State from laying duties on imports, but to that which invests Congress with the power "to regulate commerce."

"The power to regulate foreign commerce extends to the regu-

* Grove vs. Slaughter, 15 Peters' Rep. p. 508.

lation and government of seamen on board of merchant ships belonging to citizens of the United States; to conferring privileges upon ships owned and built in the United States; to quarantine, pilotage, and embargo laws; to wrecks of the seas; the construction of light-houses; the placing of buoys and beacons; the removal of obstructions to navigation in creeks, rivers, sounds and bays; to the establishment of securities to navigation against inroads of the ocean; and to the designation of particular ports of entry and delivery for the purposes of foreign commerce.

“The regulation of commerce has also been employed for the purposes of revenue; of prohibition, retaliation, and commercial reciprocity; to encourage domestic navigation; and to promote the shipping and mercantile interests by bounties, discriminating duties, and special preferences; and sometimes to regulate intercourse with a view to mere political objects.” *Duer’s Constitutional Jurisprudence*, pp. 142–5.

The law of a State granting an exclusive privilege of steam navigation upon waters wholly in the State, but which are navigable from the ocean, was held by the Supreme Court of the United States to be void, as repugnant to the federal Constitution, so far as such privilege interfered with a similar privilege derived from Acts of Congress.

The power of prohibiting the importation of slaves into the United States, after the year 1808, is included in the power to regulate commerce; as the restriction which postponed its exercise arose from an express exception in the grant of the general power. By Acts of Congress the slave trade, in importing slaves from *foreign countries*, by citizens of the United States, is declared to be piracy, and punishable with death.

It has been judicially decided that an Act of Congress laying an *embargo* upon all vessels in our ports, and prohibiting all manner of exportation, was constitutional. Under the power to regulate commerce, Congress may thus totally interdict it.

Laying an *embargo* is the prohibition, by a government, of vessels from leaving or entering certain ports for a specified time.

Commerce among the several States.

136. The “power to regulate commerce among the several States,” does not extend to that commerce which is completely internal; and comprehensive as are the terms in which it is conferred, it is, nevertheless, restricted to that commerce which concerns more States than one.

“For the genius and character of the government evince that its action is to be applied to all the external concerns of the nation, and to the internal concerns which affect the States generally; but not to those which are completely within a State, which do not

affect other States, and with which it is not necessary to interfere for the purpose of executing any of the general powers of the national government.

“The completely internal commerce of a State is therefore reserved for the State itself; but, as the power of Congress to regulate foreign commerce does not stop at the jurisdictional lines of the States, so the power to regulate commerce amongst the States is not limited by State boundaries.

“For not only do waters communicating with the ocean penetrate into the interior, and pass in their course through the several States; but in many cases there are waters in and upon the boundaries of several of the States, which, though not navigable to the sea, afford means of commercial intercourse between those States, and furnish occasion to Congress for the exercise of the power in question.

“This power may be exercised wherever the subject exists; and if the means of commercial intercourse exist within a State; if, for instance, a coasting voyage may commence or terminate within a State, then the power of Congress to regulate commerce amongst the States, may be exercised within a State.

“Commerce amongst the States must necessarily be within the States; and in the regulation of the Indian trade, the action of the law is chiefly within individual States; whilst in this case, as well as with respect to commerce amongst the States, the power of Congress being co-extensive with the subject on which it acts, cannot be stopped at the internal boundary of the State, but must enter its limits, and be exercised within its territorial jurisdiction.

“The power of Congress to regulate commerce amongst the States, extends to regulating navigation, and to the coasting trade and fisheries, within as well as without any State, wherever they are connected with the commercial intercourse with any other State, or with foreign nations.

“It extends also to the regulation and government of seamen; to conferring privileges upon vessels engaged in the coasting trade; and to the navigation of vessels engaged solely in carrying passengers, as well as of those engaged in traffic, whether propelled by steam or otherwise.

“The principles upon which a State law, requiring importers and venders of foreign goods to obtain a license from the State government, was declared to be repugnant to the Constitution of the United States, were held to apply to a similar interference with importations from one State to another.

“Although the power of a State to regulate its purely internal commerce, and establish its own police to control and promote that trade, and to guard the health and safety of its citizens, are undoubted; yet neither these nor any other acknowledged State

powers can, consistently with the federal Constitution, be so used as to obstruct or defeat the power of Congress to regulate commerce amongst the States.

Nevertheless, if measures within the powers of State legislation do not come into actual collision with the powers of the general government over navigable streams within a State, the national courts can take no cognizance of those measures or their effects, where there has been no legislation of Congress with which the operation of the State law could interfere.

Commerce with the Indians.

137. The power of Congress to regulate commerce with the Indian tribes is to be construed in the same manner; and it extends equally to tribes living within, or without the territorial limits of the United States; and the trade with them, in all its forms, is subject exclusively to the regulation of Congress.

“The Indian territory within the United States composes a part of the Union; and in the intercourse between the general government and foreign nations, in commercial regulations, and in any attempt at intercourse between foreign nations and the Indian inhabitants, they are considered as within the jurisdictional limits of the United States, and subject to many of the restraints which are imposed by the latter on their own citizens.

“The tribes residing within the acknowledged boundaries of the Union, are not deemed foreign nations, within the meaning of the Constitution, but are considered as domestic dependant nations, occupying a territory to which the United States asserts a title, which must take effect when the right of occupancy of the Indian ceases; and in the mean time they are in a state of pupilage to the general government.

“They are distinguished in the Constitution by an appropriate name from foreign nations, as well as from the several States composing the Union; and the objects to which the power of regulating commerce may be directed, are divided into several classes according to that distinction.

“The relation in which the Indians stand to the country involves practically no claim on their lands, and no dominion over their persons; but merely binds them to the general government as dependent allies, claiming the protection of a powerful friend and neighbour, and receiving the advantages of that protection without its involving a surrender of their national character.

“Congress has from time to time passed laws to regulate trade and intercourse with the Indians, which treat them as *nations*, respect their rights, and manifest a purpose to afford that protection to them for which treaties stipulate; which laws, and especially the laws now in force, consider the several Indian Nations as dis-

inct political communities, having territorial boundaries, within which their authority is exclusive.

"The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the government of the Union; whilst the powers of Congress to regulate commerce, to declare war, make peace, and conclude treaties, comprise all that is required for regulating intercourse with the Indians." *Duer's Constitutional Jurisprudence*, p. 155-161.

Navigation laws.

138. Acts of Congress have been passed, called our navigation laws, for the regulation of navigation and commerce.

"The grand aim of our policy has been to encourage our own trade, navigation and ship building, by conferring peculiar privileges on ships built or captured, and wholly owned and commanded by American citizens. For this purpose every ship engaged in foreign commerce is required to be *registered* with the collector of the port to which she belongs. The registry must contain an accurate measurement and description of the ship, with the names of the builder, master and owners. A *certificate of registry* then issues; and security is taken that it shall be used only for that ship. At every change of ownership or burthen, a new certificate must be obtained; and upon every change of master, that fact must be reported to the collector, and by him endorsed on the certificate. Moreover, every sale or transfer must be evidenced by a written bill of sale, reciting the certificate at length. A failure to comply with these requisites always involves a forfeiture of American privileges, and sometimes of the ship itself. These privileges consist in discriminating duties on foreign goods in favour of our own citizens. If a vessel be only owned by Americans, and not built here or obtained by capture, she is merely entitled to a *passport* from the custom-house, for her protection as to national character; but she cannot be registered, and must pay foreign duties. And every ship engaged in foreign commerce requires, besides a certificate of registry, various other vouchers of national character; in relation to the citizenship of its officers and seamen, the revenue laws, and the numerous regulations for the health, protection and comfort of the seamen." See Part I. c. III, as to revenue laws.

"In pursuance of this power of Congress, a system of regulations has, also, been provided for the vessels engaged in the commerce between the States, the *coasting trade and fisheries*, similar to those provided for vessels engaged in foreign commerce. If such vessels be over twenty tons burthen, they must be *enrolled* with the collector of the district, who issues a *certificate of enroll-*

ment. The rules and requisites of enrollment are in all respects the same as registry. If under twenty tons burthen no enrollment is necessary. But in either case a *license* must be taken out for the coasting trade or fishing. Otherwise, such vessels must pay foreign duties, if in ballast or laden with native products; and they are liable to forfeiture, if laden with foreign products. If vessels thus enrolled and licensed would make a foreign voyage, the enrollment and license must be surrendered, and a registry taken out, and *vice versa*. These provisions for registry and enrollment, of course, include steamboats as well as other vessels.— It will be seen that they enable the government to determine, at any time, the exact amount of American shipping, as well as the portions of it employed respectively in foreign and domestic commerce. At the same time, they enable all persons concerned to trace the title to ships, by referring to the custom house books.” (l.)

Power to naturalize aliens.

139. The power of naturalizing aliens is vested, by the federal Constitution, in Congress.

“Congress shall have power to establish a uniform rule of naturalization throughout the United States.” *Cons. of U. S. Art. I. Sect. VIII. 4.*

It is implied that Congress has the power of establishing such a rule, or of not legislating on the subject, at its discretion.

This power is an exclusive one in Congress. The States severally have no power on the subject. *See Part. II. ch. II.*

140. There is a provision of the federal Constitution as to the privileges and rights of citizens of each State in the several other States.

“The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.” *Cons. of U. S. Art. IV. Sect. II. 1.*

141. Aliens are persons born out of the jurisdiction of the United States. Some general remarks in relation to aliens, their rights and privileges, are to be found in the first chapter of this work. (m)

142. There are Acts of Congress which provide how aliens may be naturalized, or become citizens of the United States.

They may be naturalized by the courts of record of the United States, or of the several States, under the Acts of Congress, upon complying with the provisions thereof.

143. These are the requisites, in general, under the Acts of Congress, for the naturalizations of alien.

Any alien, being a free white person, of the age of twenty-one years, not a native citizen, denizen or subject of a country at war

(l) Walker's American Law, pp. 133, 134.

(m) See, above, chapter I, head Citizens of the United States.

with the United States, may be so naturalized, on the following conditions :

I. The applicant must have declared his intention, under oath or affirmation, to become naturalized, before some federal or State court of record, or its clerk, two years before his admission ; unless he has resided in this country since 1812 ; or unless being a minor he has resided therein three years before he became of the age of twenty-one years. II. The applicant must have resided for the continued term of five years, next preceeding his application, within this country, and one year within the State where the application is made ; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same ; which must be proved to the satisfaction of the Court, by other testimony than the applicant's own oath. III. The applicant must, at the time of his application, declare on oath or affirmation, before the court, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name the prince, potentate, State and sovereignty, wherof he was born a citizen or subject. IV. The applicant must make in the court, an express renunciation of any hereditary title, or order of nobility, that he may have borne in the kingdom or State from which he came.

144. The children of persons duly naturalized, being under the age of twenty-one years at the time of their parents being so naturalized, are to be considered as citizens of the United States.

The Act of Congress confines the description of aliens capable of being naturalized to "free white persons." This excludes the inhabitants of Africa, and their descendants. Indians cannot be made citizens under the Act of Congress.

Bankruptcy.

145. Congress has power to legislate on the subject of bankruptcy.

"Congress has power ;—to establish uniform laws on the subject of bankruptcies, throughout the United States." *Cons. of U. S. Art. I. Sect. VIII. 4.*

146. What are, in general, the objects of a bankrupt law ?

To compel an equal distribution of the effects of a bankrupt among his creditors, without preference, in proportion to their claims, by providing that from the time of his committing an act of bankruptcy his power over his property shall cease, and that commissioners shall be appointed to take possession of it, and to apply the proceeds thereof to the payment of his debts ; and to exempt

the person of a bankrupt acting honestly, from liability for his former debts.

147. There is not any Act of Congress in force now on the subject of bankruptcies.

The last bankrupt law by Congress was passed on the 19th day of August, 1841, and was repealed on the 3d of August, 1843.

148. What is the difference, in general, between bankrupt laws and insolvent laws?

By the bankrupt laws the debtor may be discharged from his debts; but by the insolvent laws he is, usually, only discharged from imprisonment or liability thereto.

149. Have the States severally a right to enact bankrupt laws?

Yes; where there is no Act of Congress on the subject in force; and provided that they do not violate the provision of the federal Constitution, "that no State shall pass any law impairing the obligation of contracts." And a bankrupt law of a State cannot affect citizens of other States.

Coining money. Currency.

150. What is the power of Congress as to coining money?

"Congress shall have power—to coin money, and to regulate the value thereof, and of foreign coins." *Cons. of U. S. Art. I. Sect. VIII. 5.*

There are Acts of Congress declaring what shall be money of the United States, providing for the coining of such money, and regulating its value; and which also determine the value of the coins of foreign countries.

There is thus coined by the general government gold, silver and copper money; mints being established for that purpose in different places. And gold and silver are, by Act of Congress, made a legal tender in payment of debts.

151. The provision of the federal Constitution as to the power of the several States on the subject, is:

"No State shall coin money, emit bills of credit, or make any thing but gold and silver a tender in payment of debts." *Cons. of U. S. Art. I. Sect. X. 1.*

152. The power "to coin money, and to regulate the value thereof, and of foreign coin," was given to Congress, and withheld from the several States, with the prohibition upon the several States not "to emit" bills of credit, or make any thing but gold and silver a tender in payment of debts," in order to insure a sound and uniform currency throughout the Union.(n)

There are no direct prohibitions upon Congress not to emit bills of credit, nor make any thing but gold and silver a legal tender;

(n) See Part I. Chap. V.

however such may be considered as existing by implication. Yet Congress has neither directly emitted bills of credit, nor made any thing but specie a legal tender.

153. As to the punishment of counterfeiting coin, it is provided : " Congress shall have power to provide for the punishment of counterfeiting the securities of the United States." *Cons. of U. S. Art. I. Sect. VIII. 5.*

Weights and measures.

154. " Congress shall have power—to fix the standard of weights and measures." *Cons. of U. S., Art. I. Sect. VIII. 5.*

Congress has exercised this power. It is directed by Act of Congress that a complete set of the standard weights and measures used at the custom houses, and for other public purposes, shall be delivered to the Governor of every State, or some person appointed therein, to be uniform standards throughout the Union.

As to the power of the several States on the subject;—until Congress shall fix a general standard of weights and measures for the United States, each State has the power of fixing a standard for itself. Many of the States have by law established such standards, for certain purposes.

Post offices and post roads.

155. " Congress shall have power—to establish post offices and post roads." *Cons. of U. S., Art. I. Sect. VIII. 7.*

" This power is exclusive, so far as it relates to the conveyance of letters and other articles by mail; but not in regard to post roads, as it would be unnecessary for Congress to make another road where a sufficient one for the purpose already existed; whilst, on the other hand, no State has power to deny or obstruct the passage of the mail over its public roads.

" Various provisions, in regard to post offices and the conveyance of letters and other articles by mail, have been made by Congress at different times, founded on the principle of the power being exclusive as to those objects."*

It has been claimed, that under this power, in conjunction with the powers to raise money to provide for the general welfare, and to pass all laws necessary and proper for carrying into execution the powers vested in the general government, Congress has power to appropriate money and provide for *internal improvements* in the several States by means of roads and canals.

It has also been claimed that Congress has the power to lay out, construct and improve post roads and military roads, with the assent of the States through which they pass, as well as to construct

* Duer's Cons. Jurisprudence, pp. 161, 162.

canals through the several States, for promoting and securing internal commerce, and for the more safe and economical transportation of troops and military stores in time of war ; leaving the right of jurisdiction over the soil to the respective States.

Copy rights, and patent rights.

156. The power of Congress as to patent rights and copy rights is declared by the federal Constitution.

“ Congress shall have power—to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” *Cons. of U. S. Art. I. Sect. VIII. 8.*

There are Acts of Congress securing to authors of books, &c., being citizens of the United States, or residents therein, the exclusive right of printing, publishing and selling them, for twenty-eight years, to be renewed for fourteen years, by the author, or his widow, or children ; and to inventors of useful arts, machines, manufactures, &c. the exclusive right of making and selling the same for fourteen years.

The right intended to be secured to an author is called a *copy-right* ; and to an inventor a *patent right*.

Piracies and felonies on the high seas.

157. “ Congress shall have power—to define and punish piracies and felonies on the high seas.” *Cons. of U. S. Art. I. Sect. VIII. 10.*

Piracy is defined by the law of nations to be robbery, or a forcible depredation, on the high seas, without lawful authority. And by the *high seas* is understood not only the ocean out of sight of land, but waters on the sea coast beyond the boundary of low water mark.

Congress has the right to pass laws to punish pirates, though they be foreigners, and may have committed no particular offence against the United States ; and for the purpose of giving jurisdiction, it is of no importance on whom, or where a piratical offence has been committed.

By Act of Congress, robbery on the high seas, or in any open roadstead or bay, where the sea ebbs and flows, in or upon any vessel or its crew, or lading, is punishable as piracy.

Crimes and offences against the United States.

158. The government of the Union being formed for national purposes only, its power to define and punish offences is limited to those which affect the whole country ; whilst the several States have the power of legislation, and jurisdiction, in relation to crimes and

offences generally, of a local and municipal character, as belonging to their internal police.

159. The power of Congress to punish crimes and offences is either *express* or *incidental*.

160. There are five classes of crimes and offences against the United States, which Congress has defined and punished, in pursuance of its express power granted by the federal Constitution. I. Treason against the United States. II. Offences against the law of nations; as violations of safe-conducts, or passports, for the protection of aliens, issued by the authority of the United States; infringement of the rights of ambassadors; and piracy. III. Offences committed on the high seas; as piracy, murder, manslaughter, mayhem, robbery and larceny and other felonies; being concerned in the foreign slave trade; and certain offences against ships and vessels. IV. Counterfeiting the securities and current coin of the United States. V. Offences committed in places where Congress has the power of exclusive legislation; as in the District of Columbia, the territories of the United States, and places purchased by the general government for forts, arsenals, dock-yards, and the like; as murder, manslaughter, arson, mayhem, larceny, and other felonies. There is a general provision by Act of Congress, that if any offences be committed in such place of exclusive federal jurisdiction, not specially provided for, the punishment shall be the same, as is provided for such an offence by the laws of the State in which the place is situated. Unless the jurisdiction of the State over such a place has been expressly reserved, in the cession or grant thereof, it entirely ceases.

161. There are many offences against the United States which have been defined, and their punishment provided for by Congress in pursuance of its incidental powers. These offences are principally included in the following classes. *Offences against the revenue laws*; the power to punish which is incidental to the power of Congress "to lay and collect taxes, duties, imposts and excises." *Offences against the laws in relation to the Indians and their territories*; which are declared by Congress under its powers incidental to the power to regulate commerce "with the Indians." Some of these offences are, entering the territory secured to the Indians, south of the Ohio river, without a passport from the proper authority; so entering any other such territory, for the purpose of hunting and grazing; committing any offence against the person or property of a friendly Indian within the Indian territory; trading with the Indians for the purchase of land, without authority from the general government; settling upon any lands belonging to the Indians, or attempting so to do; trading with the Indians without license; an Indian agent being concerned in any trade with Indians on his own account; any Indian or other person committing within

the Indian territory any offence which would be punishable if committed within places of exclusive federal jurisdiction.

Offences against the post-office regulations; the power of Congress to provide for the punishment of which is incidental to its power "to establish post-offices and post roads." *Certain offences in regard to foreign nations*; made punishable by virtue of the incidental power which the general government has in preserving the peace of the country with foreign nations, and directing its foreign relations. Some of this class of offences are; accepting and exercising by an American citizen, within our jurisdiction, a commission to serve one foreign government against another foreign government at peace with us; enlisting, within our jurisdiction, in the service of any foreign government on board of any vessel of war; fitting out or arming, or being concerned, within our jurisdiction, of any vessel for the service of one foreign government against another with which our country is at peace; being concerned in setting on foot any military expedition against any foreign government with which we are at peace; and the like. *Offences committed by officers of the general government*; which are made punishable by virtue of the power to appoint such officers, and of the interest and incidental power which every government has to protect itself from injury done by its own functionaries or agents. These offences are; taking illegal fees, extortion by color of office, embezzlement of the public money or property, and the like.

Offences against the law of nations.

162. Congress has power to define and punish offences against the law of nations. *Cons. of U. S. Art. I. Sect. VIII. 10.(o)*

Offences against the law of nations are violations of *safe conducts*, or passports, infringements of the rights of ambassadors or other foreign ministers, and piracies. There are Acts of Congress providing for the punishment of these offences.

Power to declare war.

163. The power of declaring war is vested in Congress.

"Congress shall have power—to declare war; grant letters of marque and reprisal; and to make rules concerning captures on sea and land." *Cons. of U. S. Art. I. Sect. VIII. 11.*

164. Letters of marque and reprisal are commissions from a government to private citizens to seize and capture the bodies or property of another nation. They are generally issued in time of war. A person so commissioned is called a privateer.

165. There is a prohibition in the federal Constitution as to any State engaging in war.

(o) See above, Chap. II. as to the law of nations.

“No State shall, without the consent of Congress, engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.” *Cons. of U. S. Art. I. Sect. X. 2.*

“No State shall grant letters of marque and reprisal.” *Art. I. Sect. X. 1.*

Army and Navy.

166. Congress is authorized to raise and support armies and navies, and provide for their government.

“Congress shall have power—to raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.” *Cons. of U. S. Art. I. Sect. VIII. 12.*

“Congress shall have power—to provide and maintain a navy.” *Cons. of U. S. Art. I. Sect. VIII. 13.*

“Congress shall have power—to make rules for the government and regulation of the land and naval forces.” *Cons. of U. S. Art. I. Sect. VIII. 14.*

The several States are prohibited from keeping troops or ships of war

“No State shall, without the consent of Congress, keep troops or ships of war in time of peace.” *Cons. of U. S. Art. I. Sect. X. 2.*

Military academy.

167. How is the power of Congress to establish a military academy derived?

It is an incidental power; incidental to the powers to make war, to raise armies, to provide and maintain a navy, and to lay and collect taxes, to provide for the common defence and general welfare.

Militia.

168. What is the power of Congress as to calling out the militia?

“Congress shall have power—to provide for calling out the militia, to suppress insurrections, and repel invasions.” *Cons. of U. S. Art. I. Sect. VIII. 15.*

169. What is the power of Congress as to organizing, arming, disciplining, and governing the militia?

“Congress shall have power—to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress.” *Cons. of U. S. Art. I. Sect. VIII. 16.*

170. The President of the United States is Commander-in-chief of the militia of the several States, when called into the actual service of the United States. *Cons. of U. S. Art. II. Sect. II. 1.*

171. How are arms provided for the militia?

Under Acts of Congress, the general government furnishes to the several States arms and military equipments in proportion to their number of militia respectively. There are national armories for the manufacture of such arms and equipments. The arms and equipments thus supplied are preserved by the States, to be distributed to the militia for discipline, and to be ready for actual service.

172. There are Acts of Congress for organizing and disciplining the militia in the several States.

173. There are Acts of Congress providing in what manner the militia may be called forth into the service of the United States.

It is provided, in general, by the Acts of Congress, that the President of the United States shall be authorized, in case of invasion, or of imminent danger of it, to call forth such number of the militia, most convenient to the scene of action, as he may deem necessary. The President's orders, for this purpose, may be given to the chief Executive magistrate of a State, or to any militia officer he may think proper. The manner in which the militia is to be organized, armed, disciplined and governed, is prescribed; and provision made for drafting, detaching, and calling forth the State quotas, when required by the President. The militia so called out are made subject to the rules of war. And persons refusing or neglecting to perform military service, when regularly called or drafted, are liable to a fine, to be adjudged by a court martial, composed of militia officers.

174. It has been adjudged by the Supreme Court of the United States, that under the federal Constitution and Acts of Congress, it belongs exclusively to the President to judge when the exigency arises, in which he may call forth the militia. (*p*)

Seat of government of the United States, &c.—Legislation over the District of Columbia, &c.

175. The Constitution has vested Congress with the power of exclusive legislation over certain districts and places.

“Congress shall have power;—to exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by consent of the Legislature of the State in which the same shall be, for the

(*n*) Kent's Comm. on American Law, pp. 264, 265.

erection of forts, magazines, arsenals, dock-yards, and other needful buildings." *Cons. of U. S. Art. I. Sect. VIII. 17.*

176. The District of Columbia, in which is the city of Washington, has become the seat of government of the United States.

The District of Columbia was ceded to the United States by the States of Maryland and Virginia. It is governed by laws made directly by Congress, either adopting those which were in force when, or enacting new provisions.

There is no Representative or Senator in Congress from it. Nor has it any local Legislature.

A citizen of this District is not a citizen of a State within the meaning of the word "State" in the Constitution of the United States, and therefore cannot maintain a suit in the federal courts against a citizen of a State. (*q*)

Congress, when legislating for the District, under this Constitutional provision, is the Legislature of the Union, and its Acts are the laws of the United States. Such laws are not confined in their operation to the District. (*r*)

The power of Congress to exercise legislation in all cases within the District, includes the power of taxing it; and Congress may impose a direct tax on the District, in proportion to the census directed by the Constitution to be taken. (*s*)

A Justice of the Peace in the District is an officer of the government of the United States. (*t*)

The Acts of Congress concerning the District did not change the laws of Virginia and Maryland, adopted by the Act of Congress as the laws of the District, further than a change of jurisdiction rendered a change in those laws necessary. (*u*)

By the Acts of Congress there is a Court established for the District, called the Circuit Court, consisting of a chief Judge and two assistant judges, to be appointed by the President of the United States, for good behaviour; and having, together with the jurisdiction vested in the Circuit Courts of the United States and the judges thereof, cognizance of all crimes and offences committed within said District, and of all cases in law and equity arising therein; the said court to appoint its clerks. An Attorney of the United States for the said district, a marshal, a register of wills and Judge of the Orphan's Court, and Justices of the Peace, for the District, are also appointed by the President. It is provided that all indictments shall be in the name of the United States, and conclude against the peace and government thereof. The city of Washington was incorporated by Act of Congress.

(*q*) 4 Cranch, 445; Peters C. C. R. 45.

(*r*) 6 Wheat. 424.

(*s*) 5 Wheat. 317.

(*t*) 3 Cranch. 331.

(*u*) 1 Cranch, 252.

Treason and the punishment thereof.

177. Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. *Cons. of U. S. Art. V. Sect. II. 2.*

178. Treason against the United States is defined by the federal Constitution.

“Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.” *Cons. of U. S. Art. III. Sec. III. 1.*

179. The term “war” in this provision comprehends internal rebellion as well as hostilities from abroad?

Territory and property of the United States.

180. What power has Congress as to the territory and property of the United States?

“The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property, belonging to the United States.” *Cons. of U. S. Art. IV. Sect. III. 2.*

This territory consists of all the *vacant* and other lands belonging to the United States. It constitutes the *public domain*. It is the exclusive property of the Union, subject only to the Indian rights that may exist.

The United States acquired their title to the public lands; by transfer or succession from Great Britain, as the effect of the revolution, and by the treaty of peace thereon with that nation; by cessions from the different States; and by purchase, or treaty, from foreign governments.

By Acts of Congress provision is made for the survey and sale of the public vacant lands. There is a branch of the treasury department of the United States called the department of public lands, and placed under the control of a chief officer, entitled commissioner of the *general land office*. Before any proceedings for the sale of such lands, the Indian title to them is extinguished by treaty through *Indian agents*, appointed by the government. Such territory is divided into *districts*, in each of which there is a *register* and a *receiver of public moneys*. A *surveyor general* is appointed for a certain number of districts. The territory is surveyed into *ranges*, *townships*, and *sections*. The townships are six miles square, and divided into thirty-six sections of one mile square; a section thus containing six hundred and forty acres. The sections are also divided into half sections, quarter sections, and

eighths of a section. The public lands are offered for sale, at first, by auction, at not less than one dollar and a quarter per acre, to be paid at the time; and, if not then sold, they are open for private sale at the land office in the district, at that price. Salt springs and lead mines on the public lands are reserved to the United States. One section of land in every township is appropriated by Act of Congress for the purposes of education.

181. It was the condition annexed to the cession of their public lands to the general government by the States, in relation to the proceeds of the sale of them, that they should be a *common fund* for the joint benefit of the then existing and future members of the Union.

“These lands, therefore, constitute a fund which may be properly devoted to any objects which are for the common benefit of the Union.”(j)

182. The general government has power to acquire and purchase foreign territory, by conquest, or treaty, or cession. It is incidental to the power to make war, and to form treaties.

The power to make such purchases is not expressly conferred by the federal Constitution. It appears to be incidental to the powers to form treaties, and to raise and appropriate money “for the common defence and general welfare.”

“Since the adoption of the federal Constitution large acquisitions of national territory have been made by the purchases of Louisiana and Florida, and by cession from the State of Georgia; and the constitutionality of the two former acquisitions, though formerly much questioned, is now considered settled beyond any doubt.(k)

And at a later period the territories of California and New Mexico have been acquired by treaty.

183. The power of Congress over the public territory and property is exclusive and universal. Its legislation over such territory without the limits of the several States is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by ordinances or laws under which it has been settled.

But the power of Congress to regulate other national property is not necessarily exclusive in all cases, unless it has acquired by cession of the States exclusive jurisdiction. If the national government owns a fort, arsenal, hospital, or light house establishment, not so ceded, the general jurisdiction of the State is not excluded in regard to the site; but subject to the rightful exercise of the powers of the national government, it remains in full force.(l)

(j) 3 Story Comm. p. 198

(k) 3 Story's Comm. p. 191.

(l) 3 Story's Comm. 198.

Territorial governments.

184. The territorial governments of the United States are governments of the territories belonging to the United States, and not lying within the limits of any State. These governments are created by Act of Congress, and are dependent upon the general government.

“As the general government possesses the power to acquire territory, either by conquest or by treaty, it would seem to follow, as an inevitable consequence, that it possesses the power to govern what it has so acquired. The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any State. It must, consequently, be under the dominion and jurisdiction of the Union, or it would be without any government at all.”

“No one has ever doubted the power of Congress to erect territorial governments within the territory of the United States, under the general language of the clause “to make all needful rules and regulations.” What shall be the form of government established in the territories depends exclusively upon the discretion of Congress. Having a right to erect a territorial government, they may confer upon it such powers, legislative, judicial and executive, as they may deem best. They may confer upon it general legislative powers, subject only to the laws and Constitution of the United States.”(m)

185. The governments in those territories are established by Acts of Congress. There is for each territory a Governor, judges and other officers, appointed by the general government; and a Legislature, consisting of a House of Representatives and legislative council, elected by the people; the Governor having an absolute negative upon the Acts of the Legislature.(n)

186. The territories have representatives in Congress. There is one Delegate from each territory, chosen by the Legislature thereof, to the House of Representatives of the United States; but who cannot vote therein.

It is the opinion of some statesmen and jurists, that this provision gives no express power to Congress to institute a territorial government. In their view the authority thereby given is limited to the regulation of the property of the government, to dispose of the territory, being the land, or other property, which authority may be exercised as well within a State as a territory; and political power is not within the grant; there being no specific power in the Constitution which authorizes the organization of territorial governments, if this power be implied from this provision relative

(k) 3 Story's Comm. p. 193-4.

(n) See above, chap. I., head Territorial Governments.

to the disposition and regulation of the public lands, it must be limited to means suitable to the end in view.

It is held by others, that the provision gives an implied power to Congress to organize a government for the protection of lands purchased or acquired, and for the administration of justice among the settlers.

It is also held, that the power to organize a government over a territory and its people is implied, independently of the above provision, from the power to acquire and possess the territory, as a district of country, and an addition to the general territory of the Union; that the right to acquire and possess the territory being admitted, the authority to govern it is implied from the inherent necessary powers of the government.

Admission of new States into the Union.

187. What is the provision of the federal Constitution as to the admission of new States into the Union?

"New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress." *Cons. of U. S. Art. IV. Sect. III. 1.*

188. Is there any limitation of this power in regard to the form of government of a State which it is proposed to admit?

"The United States shall guarantee to every State in the Union a republican form of government." *Cons. of U. S. Art. IV. Sect. IV.*

189. Congress has power to admit into the Union a new State out of territory acquired of a foreign country by conquest or treaty.

"As an incidental power, the constitutional right of the United States to acquire territory would seem so naturally to flow from the sovereignty confided to it, as not to admit of very serious question. The Constitution confers on the government of the Union the power of making war and of making treaties; and it seems, consequently, to possess the power of acquiring territory either by conquest or treaty. If the cession be by treaty, the terms of that treaty must be obligatory; for it is the law of the land. And if it stipulates for the enjoyment by the inhabitants of the rights, privileges and immunities of citizens of the United States, and for the admission of the territory into the Union as a State, these stipulations must be equally obligatory. They are within the scope of the constitutional authority of the government, which has the right to acquire territory, to make treaties, and to admit new States into the Union." (o)

190. Congress has a right to impose a restriction, prohibiting the introduction of slavery into a State, as a condition of its admission into the Union.

“By this provision (of the federal Constitution), the whole subject of admitting new States, where other States are not interfered with, is placed under the control of Congress, with the single restriction, contained in another clause, that their constitutions must be republican.” (*p*)

“At the time when the preliminary measures were taken for the admission of the State of Missouri into the Union, an attempt was made to include a restriction, prohibiting the introduction of slavery into the State as a condition of its admission. On that occasion the question was largely discussed, whether Congress possessed a constitutional authority to impose such a condition, upon the ground that the prescribing such a condition is inconsistent with the sovereignty of the State to be admitted, and its equality with the other States. The final result of the vote which authorized the erection of that State, seems to establish the rightful authority of Congress to impose such a restriction, although it was not then applied. In the Act passed for this purpose there is an express clause, that in all the territory of Louisiana, which lies north of 36° 30' North latitude, not included within the limits of the State of Missouri, slavery and involuntary servitude shall be forever prohibited. An objection of a similar character was taken to the compact between Virginia and Kentucky, containing conditions upon which the latter was erected into a separate State, upon the ground that it was a restriction upon State sovereignty. But the Supreme Court of the United States had no hesitation in overruling the objection, considering it as opposed to the theory of all free governments, and especially of those which constitute the American republics.” (*q*)

191. Is an Act of Congress constitutional which provides that a foreign territory shall, with the consent of the government or people thereof, be annexed to this country, and admitted into the Union as a State, or to be entitled to be so admitted upon the same terms as territory now within the Union? The measures taken to effect the annexation of Texas to this country have raised this question, on which there has been much difference of opinion. On the one hand, against the constitutionality of such an Act, the argument has been advanced, that our general government is one of limited powers, distributed amongst distinct departments or branches of government, which are constituted in a particular manner, each operating in its appropriate sphere, and intended as a check upon the others; that by the Constitution a treaty making power is specially established, the Constitution providing that the President

“shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur;” and that the power of making an arrangement, or of adopting any measures with a foreign government or people, is thus exclusively vested in the President and Senate. On the other hand, in favor of effecting such an annexation by the ordinary legislation of Congress, it is maintained that the power to do so is contained in the constitutional provision that “new States may be admitted, by Congress, into this Union.”

There appears to be much reason for the opinion, that, in whatever manner territory may be acquired by the general government, or annexed to this country, the power to admit into the Union new States, to be formed out of such territory, is exclusively in “Congress,” to be exercised in the course of legislation.

General provision as to the powers of Congress.

192. There is a general provision in the federal Constitution as to the powers of Congress and its authority to carry them into effect.

“Congress shall have power—to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.” *Cons. of U. S. Art. I. Sect. VIII. 18. (k)*

State acts and records—their proof and effect in other States.

193. Congress has power to prescribe the manner in which the public acts, records and judicial proceedings of any State shall be proved in every other, and the effect thereof.

“Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And Congress may, by general laws, prescribe the manner in which such acts, records and judicial proceedings shall be proved, and the effect thereof.” *Cons. of U. S. Art. IV. Sect. 1.*

There is a fuller notice of this subject, further on, in Part I. chapter VI.

ACTS OF CONGRESS, OR LAWS OF THE UNITED STATES.

How they are enacted.

194. Laws may originate or be proposed in Congress, in either House; except that, by the federal Constitution, “all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.” *Art. I. Sect. VII. 1.*

(k) See chapter III, par. 103—5.

195. Laws are enacted in Congress in this manner :—

All laws must be first passed in one House, and then in the other, according to the rules of proceeding in each House. And, by the federal Constitution, “every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.” *Cons. of U. S. Art. I. Sect. VII. 2.*

196. Every joint resolution, order, or vote of the two Houses of Congress, must be presented to the President of the United States for his approbation.

“Every joint order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.” *Cons. of U. S. Art. I. Sect. VII. 3.*

197. The President’s disapproving a bill is called *vetoing* it.

The rules of proceeding in each House of Congress are substantially the same.

198. A “bill,” in Congress, is an original draft or project of a law, introduced into either House according to the rules thereof.

199. This is the method, in general, of enacting laws by the two Houses of Congress :—

Bills are introduced into either House, upon the order of the House on the reports of *standing* or *select* committees, or upon leave granted to an individual member on motion, after due notice of his intention to move the House to grant it.

Standing Committees are appointed for the session, in each House, upon all the usual subjects of ordinary legislation, and upon the general matters incident to the proceedings of each House.

Select committees are appointed from time to time upon special subjects as they arise, and their powers cease upon the performance of the temporal duties assigned to them.

Both standing and select committees are appointed in the House of Representatives on the nomination of the Speaker; and in the Senate most generally by ballot, but in some cases on the nomination of the President of the Senate.

Bills are introduced by Standing Committees upon the order of the House upon subjects embraced within the general objects of their appointment, either accompanied by a report upon those general objects, or upon a particular subject, relative thereto, or specially referred to them; or upon the mere motion of the chairman, or any other member of the Committee, under its direction, without previous notice.

Bills are in like manner introduced by select committees, upon the order of the House on a report relative to the special matter referred to them, or on motion, without previous notice, for leave to report by bill.

Bills and resolutions before either House are passed by a majority of the members present; except in cases in which a greater number is required by the Constitution or rules of the House.

Important bills are generally referred to a committee of the whole House; and every motion or proposition for a tax or charge upon the people, or for a variation in the sum or *quantum* of a tax or duty, or for an appropriation of money, is required first to be discussed in a committee of the whole.

After commitment and report to the House, and at any time before its final passage, a bill may be recommitted at the pleasure of the House; and when a bill, either upon the report of the committee, or after full discussion and amendment in the House, stands for the next stage of its progress, the question is whether it shall be engrossed and read a third time.

When a bill has been engrossed for a third reading, and, upon being read the third time, has passed one House, it is transmitted for concurrence to the other House, in which it is subjected to similar forms of examination and discussion.

If it be altered or amended, or agreed to without amendment, or totally rejected, in the House to which it has been sent for concurrence, it is, in either case, returned to the House in which it originated, with a message communicating the result.

If amendments be made to a bill in the House to which it is transmitted for concurrence, they must be acted upon by the other House, and if agreed to, the bill is passed; if disagreed to, the House making them must *recede* from them, or, if they are *insisted upon*, the bill fails, unless the two Houses, through committees of conference, or otherwise, come to an agreement on the subject.

When a bill has passed both Houses of Congress, it is delivered to a joint committee of both Houses for *enrollment*, who see that it is correctly copied; it is then signed by the presiding officers and clerks of the two Houses; and presented, by a joint committee, to the President of the United States for his approval, or disapproval of it.

Authority and force of Acts of Congress.

200. The authority and force of the Acts of Congress are declared by the federal Constitution. (*l*)

"This Constitution, and the laws of the United States, which shall be made in pursuance thereof;—shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding." *Cons. of U. S. Art. VI. 2.*

201. The power to make laws includes the power to repeal them. An Act of Congress which has been passed in all the constitutional forms, may at any time be repealed by another Act passed by the same Congress, or at a subsequent one in the same manner.

202. A law enacted by Congress, and approved by the President, or passed constitutionally without his approval, is called an Act of Congress, or law of the United States.

A statute is a written law of a country, made and enacted by the legislative authority thereof. The Acts of Congress are statutes of the United States. (*m*)

203. An Act of Congress is to be considered as having been passed and enacted, when it was approved and signed by the President of the United States, or, without his approval, became a law, as prescribed by the federal Constitution.

204. The date of an Act of Congress is the day of its being approved by the President of the United States, or of its becoming a law.

205. The latest statute repeals all former statutes on the same subject, so far as their provisions are contrary to or inconsistent with it.

206. An Act of Congress, which has gone through all the forms of a law, may be declared unconstitutional and void. Any Act of Congress which is contrary to the provisions of the federal Constitution, is void; and may be so adjudged by the courts of justice, in the administration of the law.

207. An Act of Congress may be finally adjudged to be constitutional or unconstitutional, and consequently valid or void, by the Supreme Court of the United States; to which appeals may be

(*l*) See Part II. chap. II.

(*m*) See Part I. chap. I. p. 23.

had from all the inferior Courts of the United States; and from the highest court of law or equity in any State, when the validity or construction of any such Act of Congress shall be drawn in question, and the decision shall be against it. (*n*)

208. An Act of Congress cannot, under the Constitution, be declared void or annulled by a State. Acts of Congress are, by the federal Constitution, made the supreme law of the land, to be construed as to their validity and meaning only in the manner directed by the Constitution. (*o*)

209. The State courts may in the ordinary course of administering justice, pronounce a law of the United States, or an authority exercised under the national government, to be void, as repugnant to the federal Constitution; but this power is exercised subject to the appeal which lies in all such cases to the Supreme Court of the United States, whose decision alone is final and conclusive. And an adjudication of a State court can, at all events, be only binding in the particular suit or case in which it was made, or according to the jurisdiction of the Court.

(*n*) See Part II. chap. IX. head Judiciary; and also chap. II. p. 38.

(*o*) See Part I. chap. II. p. 38; and Part II. chap. I. 9, 17.

CHAPTER IV.

POWERS PROHIBITED TO CONGRESS AND THE GENERAL GOVERNMENT.

1. There are certain powers expressly prohibited, by the federal Constitution, to the Congress and to the general government. (*a*) It is provided that Congress shall not pass certain laws, which are mentioned and described, or any laws relative to a particular subject.

2. There are powers the exercise of which is prohibited to Congress by certain general principles and provisions contained in the federal Constitution. These provisions are of a general nature, in reference to the powers of the government and the rights of the people. (*b*)

3. Congress, or the general government, cannot exercise a power prohibited by, or contrary to any provision of the federal Constitution. A law passed, or act done in pursuance of such a power would be unconstitutional and void.

Importation of slaves.

4. There is a provision in the federal Constitution as to the importation of slaves.

“The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.” *Cons. of U. S. Art. I. Sect. IX. 1.*

5. This provision implies that Congress has had the power, since the year 1808, and now possesses it, to prohibit the importation of slaves.

Such a power is included in the power of Congress to regulate commerce. And there are laws of the United States prohibiting such importation from any *foreign* country, under severe penalties; and declaring any participation in the *foreign* slave trade to be *piracy*. (*c*)

(*a*) See above, chapter I. p. 24, and chapter III. p. 69, as to the classification of the powers of Congress and the government.

(*b*) See Part I. chapter VII.

(*c*) See Part I, chapter III, head Power of Congress to regulate Commerce.

6. By the Acts of Congress of 1794 and 1800, all citizens of the United States, and residents thereof, were prohibited, under severe penalties, from being in any way concerned in carrying on the slave trade, except for the direct importation of slaves into the country. In 1807 an Act of Congress was passed prohibiting altogether such importation, to take effect from the first day of the year 1808. The Act of Congress of 1820 declares any participation in the foreign slave trade to be piracy, and punishable with death.

7. The ordinance of Congress of 1787, providing for the government of the North-western Territory, forever prohibited slavery therein. The Act of Congress admitting Missouri as a State into the Union, expressly prohibits slavery in all the territory west of the Mississippi and North of the latitude of $36^{\circ} 30'$, except Missouri.

This last mentioned Act is called the "Compromise Act." It was repealed, so far as respects the provision stated, by the Act of Congress of 1854, for organizing a government in the territory of Nebraska.

Writ of Habeas Corpus.

8. The privilege of the writ of *Habeas Corpus* is expressly secured by the federal Constitution.

"The privilege of the writ of *Habeas Corpus* shall not be suspended, unless when in case of rebellion, or invasion, the public safety may require it." *Cons. of U. S. Art. I. Sect. IX. 2.*

9. It is a writ issued by a judge or a court of justice, at the instance, or in behalf of a person alleged to be unlawfully imprisoned, or deprived of his liberty, in any manner; requiring that he shall be produced, with the cause of his imprisonment, before a judge or court of justice, that, if sufficient cause is not shown to the contrary, he may be discharged or liberated.

It may be used for the purpose of having a person who has been arrested or imprisoned, on a criminal charge, discharged on his giving bail for his appearance to answer the charge before the proper court, or in order to reduce the amount of bail required.

There is a similar provision in the constitutions of most of the States. (*d*)

Bill of attainder.

10. "No bill of attainder shall be passed." *Cons. U. S. Art. I. Sect. IX. 3.*

11. A bill of attainder is a special law, inflicting capital punishment on a particular person or persons for an offence or offences before committed, without a trial or conviction in the ordinary courts of justice. Such punishment was formerly attended with

(*d*) See Part II. chapter III.

forfeiture of estate, and the corruption of the blood, called in law "attainder," so as to take away or prevent all right of inheritance or succession in his children.(e)

If the law inflicts a milder punishment than death, it is called a *Bill of Pains and Penalties*; but it seems that Bills of Attainder, in the sense of the Constitution, include these.

There is a similar provision in the constitutions of the several States.(f)

12. "But no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained." *Cons. of U. S. Art. III. Sect. III. 2.*

Ex post facto laws.

13. "No *ex post facto* law shall be passed." *Cons. of U. S. Art. I. Sect. IX. 3.*

An *ex post facto* law is a law relative to an act done or committed before the law was enacted. It has been adjudged that the prohibition refers only to criminal laws, and applies to any law which makes an act criminal which was before innocent, or punishable in a mode or measure in which it was not punishable when the act was committed, unless it be to diminish the punishment.

Such a law is one that makes an act criminal which when committed was no offence.

There is a similar provision in most of the Constitutions of the several States.(g)

As to taxes or duties.

14. There is a prohibition in the federal Constitution as to the manner of laying taxes or duties, by Congress.

"No capitation(h) or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed." *Cons. of U. S. Art. I. Sect. IX. 4.*

Representatives in Congress, and direct taxes, being apportioned among the several States, according to the number of inhabitants within them respectively, to be computed in the manner directed, this section and the federal method of computation have been considered in another part of this work.(i)

As to taxes on exports.

15. "No tax or duty shall be laid on articles exported from any State." *Cons. of U. S. Art. I. Sect. IX. 5.*

The several States are also prohibited to lay imposts or duties on imports or exports. *Cons. of U. S. Art. I. Sect. X. 2.*

(e) See Part II. chap. III.

(f) See Part II. chapter III.

(g) See Part II. chapter III.

(h) See Part I. chapter III. as to the meaning of the terms.

(i) See Part I. chapter III. p. 75-6, 195.

As to the ports and commerce of the several States.

16. "No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another." *Cons. of U. S. Art. I. Sect. IX. 5.*

Drawing money from the treasury.

17. There is a prohibition in the federal Constitution as to drawing money from the treasury of the United States.

"No money shall be drawn from the treasury but in consequence of appropriations made by law." *Cons. of U. S. Art. I. Sect. IX. 6.*

Appropriations of money can only be made by Acts of Congress duly passed and enacted, and money be drawn from the treasury in pursuance thereof.

Appropriations for raising and supporting armies.

18. There is a constitutional prohibition upon Congress in relation to such appropriations.

"But no appropriation of money to that use shall be for a longer term than two years." *Cons. of U. S. Art. I. Sect. VIII. 12.*

Titles of nobility, &c.

19. The prohibition in the federal Constitution on this subject is—

"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince or foreign State." *Cons. of U. S. Art. I. Sect. IX.*

As to religion.

20. What prohibition is there to Congress as to an establishment of religion, or preventing the exercise thereof?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Cons. of U. S. Amend. Art. I.*

"But no religious test shall ever be required as a qualification to any office or public trust under the United States." *Cons. of U. S. Art. VI. 3.*

Freedom of speech and the press.

21. There is a prohibition to Congress securing the freedom of speech and of the press.

(j) See Part I. chapter III. p. 102.

“Congress shall make no law abridging the freedom of speech or of the press.” *Cons. of U. S. Amendment, Art. I.*

Right of petition.

22. What prohibition to Congress is there as to the right of petition?

“Congress shall make no law abridging the right of the people peaceably to assemble, and to petition the government for redress of grievances.” *Cons. of U. S. Amend. I.*

General provisions as to powers not delegated.

23. What general provisions are there in the federal Constitution, as to powers not delegated to the United States?

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” *Cons. of U. S. Amend. Art. X.*

“The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” *Cons. of U. S. Amend. Art. IX.*

“And nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.” *Cons. of U. S. Art. IV. Sect. III. 2.*

CHAPTER V.

POWERS PROHIBITED TO THE SEVERAL STATES.

1. There are powers prohibited, by the federal Constitution, to the several States. It was necessary that the Constitution should embrace such limitations and restrictions, in order to preserve consistency of action amongst the particular States, and in regard to them and the general government. They are the results of compromise, for the benefit of the Union ; being a part of those grants and concessions, on the part of the people of the several States, the combination of which forms the strength and beauty of our system.

2. These prohibitions are either *express* or *implied*. They may be also divided into *absolute* and *qualified*.

3. There are powers expressly prohibited to the several States. The States are thus forbidden to pass laws, or do acts which are specified ; or they are restrained from legislating or acting in relation to certain subjects.

4. There are implied prohibitions of powers to the several States, being such as are contained in certain general principles and provisions of the Constitution. (*k*) Such are also included in certain rights and privileges secured to the several States and the citizens thereof, by the Constitution. (*l*) They arise, likewise, from the grant of exclusive powers to Congress or the general government.

5. There are powers granted to Congress, or the general government, of such a nature, as to be *exclusive*, to be solely exercised by them respectively, and being consequently withheld from or forbidden altogether to the several States. (*m*)

6. As to that class of powers which exist in the general government, or Congress, and the several States *concurrently* ; if the general government, or Congress, exercises such a power, a State cannot exercise it differently. And there are cases, under that class, in which if the general government exercises such a power, a State cannot, from the nature of the case, legislate on the subject. (*n*)

7. *Absolute* prohibitions positively forbid the exercise by the several States of certain powers under any circumstances ; those

(*k*) See Part I. chapter VII.

(*l*) See Part II. chap, VI.

(*m*) See above, chap. I. p. 33, 34.

(*n*) See above, chap. II. p. 33, 34.

qualified being of powers not to be exercised “without the consent of Congress.”

8. A State cannot pass a law, or exercise a power, contrary to any provision of the federal Constitution, to whatever subject it may relate; and whether the provision is considered in reference to its express terms, its implied meaning, or its proper bearing and effect.

No treaty or alliance, &c.

9. There is a prohibition, in the federal Constitution, as to a State entering into any treaty or alliance.

“No State shall enter into any treaty, alliance or confederation.” *Cons. of U. S. Art. I. Sect. X. 1.*

“No State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power.” *Cons. of U. S. Art. I. Sect. X. 2.*

The implied power of a State to enter into agreements with another State or foreign power, with the consent of Congress, is understood to refer only to agreements respecting matters of local concern, as questions of boundary and the like.

10. *Not to engage in war.*

“No State shall—grant letters of marque and reprisal.” *Cons. of U. S. Art. I. Sect. X. 1.*

“No State shall, without the consent of Congress,—engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.” *Art. I. Sect. X. 2.*

Not to keep troops, &c.

11. “No State shall, without the consent of Congress,—keep troops or ships of war in time of peace.” *Cons. of U. S. Art. I. Sect. X. 2.*

Not to coin money, emit bills of credit. &c.

12. “No State shall—coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts.” *Cons. of U. S. Art. I. Sect. X. 1.(o)*

No law impairing contracts.

13. “No State shall—pass any law impairing the obligation of contracts.” *Cons. of U. S. Art. 1. Sect. X. 1.*

14. What has been adjudged as to the construction of this provision of the federal Constitution?

— (o) See above, chapter III. page 90.

That the prohibition is limited to the passage of any law impairing *prior contracts*. That it extends to contracts between States, or between a State and individuals; a charter or law creating a private corporation being such a contract, but not a charter or law creating a public corporation. (*p*)

By contracts, in the sense of the Constitution, are understood; 1. Every executed agreement, whether between individuals or between individuals and a State; 2. Every executory agreement, which confers a right of action, or creates a binding obligation, in relation to property or some object of value, and which may be enforced in a court of justice. But the term *contract* does not comprehend the political relations between a government and its citizens.

A legislative compact or grant is within the meaning of the Constitution; and when a law in its nature amounts to a contract, and absolute rights have vested under it, its repeal can neither divest those rights, nor destroy nor impair a title acquired under them; for a grant is a contract executed.

A State bankrupt or insolvent law, which discharges a debtor from all liability for any debt contracted before such law was passed, on his surrendering his property in the manner it prescribes, is void, as it impairs the obligation of the contract. It is not so as to a State law which provides for the discharge of a debtor from liability for debts contracted after the passing of the law; though a discharge under it will not in general be a bar to an action brought by a citizen of another State in the courts thereof, or in a court of the United States.

A State law which exempts the debtor from imprisonment only, is not considered as impairing the obligation of a contract, though at the time it was entered into he was liable to such imprisonment. Such laws have been enacted in the several States generally. The subject of bankrupt laws is referred to, above, under the proper head, in treating of the powers of Congress.†

Statutes which merely change or affect the mode of action or recovery, or the method of remedy, on a contract, without destroying the remedy altogether, are not unconstitutional. Statutes of limitation, limiting the time in which actions and suits at law can be brought, are valid; unless they take away the remedy entirely. So confirmatory laws, which are intended to cure defects in form only, as to give to defective acknowledgments of deeds the same efficacy as if they had originally been made in proper form, or to establish titles rendered doubtful by the omission of some requisite in form, have been held by the Courts to be good. It is not un-

(*p*) As to public and private corporations, see Part the Second, chap. ii.

(†) See above, chap. III., head Bankruptcy.

constitutional to provide a new or additional remedy for a just right already in being, and which would be lost and destroyed if no remedy were provided.

The Constitution of the United States does not prohibit the several States from passing retrospective laws generally, but only *ex post facto* laws. Hence the Supreme Court of the United States cannot pronounce an Act of a State legislature to be void, as contrary to the Constitution, merely because such Act divests antecedent rights of property. §

Recording Acts, passed by State Legislatures, by which an elder grantee is postponed to a younger, if the prior deed is not recorded within a limited time, do not impair the obligation of contracts, whether the deed is dated before the passage of such Acts or not. ¶

No new principle was adopted, in prohibiting the passage of a law by a State, which should impair the obligation of a contract. It was merely affirming a fundamental principle of law, and by putting contracts under the protection of the Constitution, securing the rights and property of the citizens from invasion by any power whatever.

It is an important consideration that the principle was recognized and adopted by the Ordinance of Congress of 1787, as a part of that system of civil liberty which, in the language of the Ordinance, "formed the basis on which our republics, their laws and constitutions are erected," and which was declared by it to be a fundamental law of all new States. The Ordinance provided, "And in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force in the said territory, that shall in any manner interfere with, or affect private contracts, or any agreements, *bona fide*, and without fraud, previously formed."

15. There is not a like express prohibition, in the federal Constitution, on Congress. Congress has, however, no power to interfere with contracts, unless it be expressly granted to it. Congress is invested with this power in relation to bankruptcies, as an enumerated, not as an implied power; and in no other form can it impair the obligation of a contract.

"It seems that there is nothing in the federal Constitution which forbids Congress to pass laws violating the obligation of contracts, though such power is denied to the several States." 1 *Peters' Reports*, 337.

The provisions in the federal Constitution, "Nor shall any person

§ 8 *Peters' Rep.* 110; 1 *Baldw.* 74; 2 *Peters' Rep.* 414 · 11 *Peters' Rep.* 411.

¶ 3 *Peters' Rep.* 280.

be deprived of life, liberty or property, without due process of law ;” —“ Nor shall private property be taken for public use, without just compensation,”—(*Amend. Art. V. ;*)—“ The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated,” (*Amend. Art. IV. ;*) may be considered as embracing this principle.*

There is a similar provision in the constitutions of the several States, in general.

No ex post facto law.

16. “ No State shall pass—any ex post facto law.” *Cons. of U. S. Art. I. Sect. X. 1.*

There is an explanation of terms given, with some remarks as to the application of the provision, in the preceding chapter of this work.(q)

The federal Constitution contains a similar prohibition to Congress. See *Cons. of U. S. Art. I. Sect. IX. 3.*

No bills of attainder.

17. “ No State shall—pass any bill of attainder.” *Cons. of U. S. Art. I. Sect. X. 1.*

There is a like provision as to Congress, with respect to which some observations have been already made.(r)

No title of nobility.

18. No State shall—grant any title of nobility. *Cons. of U. S. Art. I. Sect. X. 1.*

The federal Constitution forbids the granting of titles of nobility by the United States, and the receiving of any title, office, present or emolument, by an officer of the general government, from any king, prince or foreign State. *Cons. of U. S. Art. I. Sect. IX. 7.*

The Constitution of a State generally contains such a prohibition to its government.

No duties on imports or exports.

19. “ No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the nett produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States ; and all such laws shall be subject to the revision and control of Congress.”(s) *Cons. of U. S. Art. I. Sect. X. 2.*

* See Part I. chap. VII.

(q) See, above, Chap. IV p. 120. (r) See above, Chap. IV. p. 119.

(s) See explanation of terms above, Chapter III. p. 89 ; and as to the powers of the several States to lay taxes, see above, Chapter III.

“No tax or duty shall be laid on articles exported from any State.” *Cons. of U. S. Art. I. Sect. IX. 5.*

No duty on tonnage.

20. “No State shall, without the consent of Congress, lay any duty on tonnage.” *Cons. of U. S. Art. I. Sect. X. 2.*

Tonnage is the capacity of a ship or vessel, or the weight of goods carried by her, estimated per ton.

Fugitives from service or labor.

21. What is the provision of the federal Constitution as to fugitives from labour and service?

“No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.” *Cons. of U. S. Art. IV, Sect. II, 3.*

The terms “held to labor or service” have been judicially construed to comprehend or mean slaves.^(t) The course of proceeding for the arrest and recovery of fugitive slaves by their owners is directed by Act of Congress, of February 12, 1793; which provides that when a person held to labor or service in any of the United States, or in either of the territories on the North-west or South of the river Ohio, under the laws thereof, shall escape into any other of the said States or territories, the person to whom such labor or service may be due, his agent or attorney, is empowered to seize or arrest such fugitive, and to take him or her before any judge or District Court of the United States, residing or being within the State, or before any magistrate of a county, city or town corporate, where such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, which shall be sufficient warrant for removing the said fugitive to the State or territory from which he or she fled. The Act of Congress, also, imposes a penalty upon any person knowingly and wilfully obstructing or hindering such claimant from seizing or removing his fugitive slave.

State judges or magistrates are not compelled to exercise jurisdiction under an Act of Congress; but they may do so, if not prohibited by the laws of the State.^(u)

(t) See, above, chap. I. p. 66.

(u) See Part I. chap. IX. title Judiciary, &c.

In some of the States there are Statutes providing that no judge, magistrate, sheriff, gaoler or other officer of the State shall take jurisdiction or act respectively under the Act of Congress of 1793; and forbidding the use of the gaols of the State for the detention of slaves.

It has been decided, by the Supreme Court of the United States, that the Act of Congress of 1793, was constitutional, and passed in pursuance of an express provision of the Constitution of the United States; that it excludes all State legislation on the same subject; and that no State has a right by its own legislation to interfere with or impede the execution of any law of Congress on the subject of fugitive slaves. 16 *Peters' Reports*, p. 559. This decision renders void all statute regulations by the several States on the subject, so far as they conflict with the Act of Congress.

It has also been adjudged by the Supreme Court of the United States, that the owner may pursue and take his fugitive slave in another State without warrant; that he may arrest him any where, and at any time, and that no one has a right to oppose the master, or demand proof of property. 1 *Baldwin's Reports*, p. 571,—16 *Peters' Reports*, 539.

The master only, or some one expressly authorized by him, can lawfully make such an arrest.

The person arrested has, nevertheless, the right to a writ of *habeas corpus*, to be heard before a judge of the State, in which he is arrested, or before a federal judge; before whom the question of ownership, agency, slavery and escape, may be investigated, and the allegations thereof must be proved. The ownership and slavery may be established by such evidence as the Act of Congress of 1793 directs.

It seems that a State law authorizing the arrest of an alleged fugitive slave, coming into the State in a vessel from another State, without the authority of the owner, is unconstitutional and void.

The clause of the federal Constitution on this subject, and the Act of Congress, apply only to persons *escaping* or being *fugitives* from labor or service; and if a slave be voluntarily brought, by his master, into a State where slavery does not exist by law, or comes there with the consent of his master, the slave becomes free, and cannot be compelled to return. 2 *Kent's Comm.* p. 257, *note*.

Where a slave was carried by the owner to France, where slavery is not tolerated, and under the operation of whose laws the slave became immediately free, and was brought back to Louisiana, it was decided by the Courts in that State, that the slave having been free for one moment in France could not be reduced to the state of slavery again in Louisiana. 2 *Kent's Comm.* p. 258, *in note*.

In some of the slave-holding States, it has been decided in the Courts, that if a slave goes lawfully from such a State into a non-

slave-holding State, and acquires a domicile there with his master, or is emancipated there by his master, he becomes emancipated, and ceases to be a slave on his return. But if he be carried there by his master for a temporary purpose, and returns, his state of slavery remains. 2 *Kent's Comm.* p. 257, *in note*.

In some of the States, where slavery does not exist, it was provided by statute that persons sojourning in the State may keep their slaves there for a limited time; as in New York for nine months, and in Pennsylvania for six months. "These laws are acts of comity on the part of those States, and were not required by the Constitution of the United States, nor by the Act of Congress of Feb. 12th, 1793." 2 *Kent's Comm.* p. 257, *in note*.

The statutes containing these provisions, in the States mentioned, have been repealed.

The Act of Congress, of February 12, 1793, is not repugnant to the ordinance of 1787, as to the States formed out of the territory North-west of the Ohio river. (v)

In 1850 was passed the Act of Congress entitled "An Act to amend, and supplementary to, the Act entitled 'An Act respecting fugitives from justice and persons escaping from the service of their masters,' approved February 12, 1793." By this Act of Congress, the Circuit Courts of the United States and the Superior Court in each organized territory of the United States are authorized to appoint commissioners, and are required "from time to time to enlarge their number, with a view to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by the Act;" the said commissioners to have concurrent jurisdiction, with the Circuit, District and Territorial Judges of the United States, and to "grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled;" all marshals and deputy marshals being required to obey and execute all warrants and precepts issued under the Act; any marshal or deputy on the escape of such a fugitive from his custody to be liable to the claimant for the full value of the service or labor of such fugitive; the said commissioners being "empowered to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them," with authority to such commissioners or the persons appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus*, of the proper county, when necessary to ensure a faithful observance of

(v) See *Jones vs. Vansant*, 5 Howard's Rep. 215. *Graves vs. The State*, decided by the Supreme Court of Indiana, 1849.

the clause of the Constitution referred to, in conformity with the provisions of this Act ; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose. The Act provides that on the escape of any such fugitive into any other State or Territory, the person to whom his service or labor may be due, or the attorney thereof, duly authorized by power of attorney in writing, may pursue such fugitive, either by procuring a warrant from any of the courts, judges or commissioners aforesaid, for the apprehension of such fugitive, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such fugitive to be taken forthwith before such Court, judge or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner ; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such Court, judge or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and to take depositions under the laws of the State or Territory from which such fugitive may have escaped, and with proof also by affidavit of the identity of the fugitive, that the person so arrested does owe service or labor to the claimant, and escaped—to deliver to such claimant, or the attorney thereof, a certificate setting forth the substantial facts of the case, with authority to such claimant, or the agent or attorney thereof, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to remove such fugitive back to the State or Territory whence he or she may have so escaped ; such certificate “to be conclusive of the right of the person in whose favor granted to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons, by any process issued by any court, judge, magistrate or other person whomsoever.” The Act provides that any person who shall obstruct or prevent such claimant, or his agent or assistant, from arresting such fugitive, or who shall rescue or attempt to rescue such fugitive ; or who shall aid or abet such fugitive to escape ; or who shall harbor or conceal such fugitive, so as to prevent his discovery and arrest, after notice or knowledge of his owing service or labor as aforesaid, shall be subject to fine and imprisonment, and shall forfeit as civil damages to the party injured one thousand dollars. The Act provides that a commissioner shall be entitled to a fee of ten dollars in such a case, upon the delivery of a certificate as aforesaid, or to a fee of five dollars in a case where the proof shall not, in the opinion of the commissioner, warrant such a certificate. The Act provides that upon affidavit made by the claimant, or his agent, after such certificate,

that he has reason to apprehend that the fugitive will be rescued by force, it shall be the duty of the officer making the arrest to retain the fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to the claimant or his agent; the officer to employ so many persons as he may deem necessary to overcome such force; the officer and his assistants to be allowed their fees and expenses, as in criminal cases, to be paid out of the Treasury of the United States. The Act provides that proof of the service and labor being due, and of the escape, may be made before any court of record, or any judge thereof, of the State or Territory whence the fugitive escaped, and that the record of such proof, on its production before any such United States Court, judge or commissioner, shall be taken to be full and conclusive evidence of the escape and ownership.

CHAPTER VI.

OF CERTAIN SPECIAL RIGHTS AND PRIVILEGES EXPRESSLY SECURED
TO THE SEVERAL STATES, AND THE CITIZENS THEREOF, AND
OF CERTAIN COVENANTS AND ENGAGEMENTS BETWEEN THEM,
BY THE FEDERAL CONSTITUTION.

1. There are certain special rights and privileges expressly granted and secured to each of the States, and the citizens thereof, by the federal Constitution, being the subjects of mutual covenants, concessions and grants, by the people of the several States, acting unitedly for their common benefit.

In the order in which the general subject is here treated, these rights and privileges are considered as distinct from the *reserved* rights and powers of the several States. They are not those which are reserved and retained as originally possessed, but they are specially granted and superadded to the people of each State, by the Constitution.

They regard, for the most part, the relations between the several States themselves and the people thereof; though, in some instances, they refer to them as connected with the general government.

2. The provisions of the federal Constitution relative to these rights and privileges are designed, with others, to promote the maintenance of harmony and proper intercourse amongst the States.

3. There are thus obtained by the States severally, and the citizens thereof, certain privileges and benefits, not otherwise to be enjoyed, in regard to their particular municipal laws and regulations respectively.

4. The people of each State have, under the federal Constitution, parted with their power in relation to the subjects of some of these provisions, within the particular territory of the State, for the mutual benefit of the people of all the States.

Public acts, records and judicial proceedings of each State.

5. What is the provision of the federal Constitution?

“ Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and judicial proceedings shall be proved, and the effect thereof.” *Cons. of U. S. Art. IV. Sect. I.*

6. There is an Act of Congress for carrying this provision into effect.

Congress, by the Act of May 26, 1790, provided the mode by which records and judicial proceedings should be authenticated, and declared that they should have such faith and credit given to them in every Court within the United States as they had by law or usage in the Courts of the State from whence the records were taken.

Privileges of citizens of each State in the others.

7. What is the privilege of the citizens of each State in the several States?

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. *Cons. of U. S. Art. IV. Sect. II. 1.*

It has been decided that citizens of the District of Columbia are not citizens of a State, within the meaning of the word "State" in the Constitution of the United States.^(a) So of citizens of a Territory.

This provision of the Constitution does not refer to political privileges, in the proper sense of the terms, but to those which are civil. It does not mean that a citizen of a State shall have the right to vote, or be elected to office, in another State. It has been ruled by the courts, that it secures to the citizens of all the other States the privilege of acquiring, holding and enjoying personal and real property, in a State, free from restrictions, taxes and burdens, to which the property of the citizens of the State is not liable.* And it must certainly include the protection of personal liberty, and the common personal civil rights.

There has been a difference of opinion whether free colored persons are *citizens*, within this provision of the federal Constitution.†

In Tennessee, it was adjudged by a Court of the State, that a State may constitutionally prohibit free persons of color from removing into the State to reside therein, on the ground that such persons are not *citizens* within the above constitutional provision, for they are not in any of the States entitled to all the privileges and immunities of citizens.

Some of the Southern States having by their laws prohibited, or placed restrictions upon, the ingress and immigration of free colored persons into those States, subjecting them to imprisonment and other penalties upon entering therein; and cases having occurred, in which free coloured persons from non-slave-holding States, inhabitants and citizens thereof, have been imprisoned and punished under those laws, their constitutionality has been de-

(a) 2 Cranch, 445. Peters, C. C. Rep. 45.

(b) 1 Wheat. 91.

* 3 Harr. & M'Hen. Rep. 554. 2 Munford, 308.

† See Part I. ch. I. p. 51.

nied, and much controversy between the States concerned has arisen therefrom.

It would seem, that the question of citizenship, in this connection, depends upon the laws and institutions of the State, of which the individual was an inhabitant and denizen at the time.

As to fugitives from justice.

8. This is the provision of the federal Constitution as to fugitives from justice :

“A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.” *Cons. of U. S. Art. IV. sect. II. 2.*

9. The manner in which the demand and surrender are to be made is prescribed by Act of Congress.

By the Act of Congress, of 1790, the executive of the State in which the offence was committed must make a demand, accompanied with a certified copy of an indictment or affidavit of the committing of the offence, upon the executive of the State, where the offender has fled, who is authorized to cause him to be arrested, and surrendered to the agent of the executive making the demand. The law relative to the arrest of fugitive criminals from another State, and the forms of process in such cases, may be found in the *American Magistrate*, (1850,) and *McKinney's Justice*.

The delivery of fugitive criminals from foreign countries, for offences there committed, which is called their extradition, may properly be the subject of notice here.

“It has sometimes been made a question, how far one nation was bound by the law of nations, independently of treaty, to surrender, upon demand, fugitives from justice, who having committed crimes in one country flee to another for shelter. It is declared by some of the most distinguished public jurists, that every State is bound to deny an asylum to criminals, and upon application and after due examination of the case, to surrender the fugitive to the foreign State where the crime was committed. The language of the authorities is clear and explicit, and the law and usage of nations as declared by them rest on the plainest principles of justice. It is the duty of the government to surrender up fugitives upon demand, after the civil magistrate shall have ascertained reasonable grounds for the charge, and sufficient to put the accused upon his trial. The guilty party cannot be tried and punished by any other jurisdiction than the one whose laws have been violated, and, therefore, the duty of surrendering him applies as well to the case of subjects of the State surrendering, as to the case of subjects of the power demanding the fugitive. The

only difficulty, in the absence of positive agreement, consists in drawing the line between the class of offences to which the usage of nations does, and to which it does not apply; inasmuch as it is understood in practice to apply to crimes of great atrocity, or deeply affecting the public safety."

It appears that jurists have expressed doubts, and the decisions of courts, both in this country and in foreign countries, have been different, whether, upon principles of international law, and independent of treaty or statute, any court of justice is authorized to surrender a fugitive from justice. (c)

It would seem that the power to surrender a fugitive criminal to a foreign nation does not reside in any of the States of the Union; that it belongs to the federal government, to be exercised by treaty, or otherwise, as may be deemed most for the public interest in the regulation of our foreign intercourse. (d)

The subject of the surrender of fugitive criminals has been made the matter of agreement, by treaties, between the government of the United States and several foreign nations; as England, France.

The statutes of New York authorize the Governor, in his discretion, on a requisition from a foreign government, to surrender a fugitive charged with murder, forgery, larceny, or other crime; which by the laws of the State of New York is punishable with death or imprisonment in the State penitentiary. (e)

Fugitives from service or labor.

10. The provision of the federal Constitution as to fugitives from labor or service, comes under this head.

"No person held to labor or service in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such labor or service, but shall be delivered up, on claim of the party to whom such service or labor may be due." *Cons. of U. S. Art. IV. Sect. II. 3.*

The Acts of Congress of 1793 and 1850 direct in what manner a fugitive from service or labor may be recovered in any State to which he may have fled.

This subject is more fully considered, under the same head, in the next preceding chapter.

Guaranty of a republican government, &c.

11. "The United States shall guarantee to every State in this

(c) Kent's Comm. 37. 3 Story's Conflict of Laws, p. 520, 522.

(d) Opinion expressed by a majority of the Supreme Court of the U.S., 14 Peters' Rep. 574. 1 Wheat. C. C. 434.

(e) 1 Kent's Comm. p. 36, 37.

Union a republican form of government." *Cons. of U. S. Art. IV. sect. IV.*

Protection in each State against invasion.

12. "The United States shall protect each of the States against invasion." *Cons. of U. S. Art. IV. Sect. IV.*

Congress has power, by the Constitution, to raise and support armies; to provide and maintain a navy; to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions. The powers, and the exercise thereof, have been the subject of notice, under the proper heads, in the previous chapters of this work. (*f*)

Protection against domestic violence.

13. The United States shall protect each of them; "on the application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence." *Cons. of U. S. Art. IV. Sect. IV.*

(*f*) See, above, Chapter III.

CHAPTER VII.

OF CERTAIN GENERAL PRINCIPLES AND DECLARATIONS OF RIGHT, CONTAINED IN THE FEDERAL CONSTITUTION.

1. There are, in the Constitution of the United States, certain general principles and provisions restrictive of the powers of the government, and declaratory of the liberty and rights of the people; being applicable, also, in some instances, to the relations of the people to the governments of the several States.

2. The rights of the people protected by these principles and provisions may be called and classed as the *declared* and *peremptory* rights of the people. (a)

3. The authority and force of these principles and provisions are such that they are binding on the general government, and the several State governments, in all the departments and branches thereof, and on the people generally.

They are rules of construction, by which the federal Constitution is to be interpreted, and its meaning ascertained. And there cannot be any law of Congress passed, or any power exercised by the general government, in any of its branches, contrary to, or inconsistent with them.

4. Laws of the several States, or acts of their governments respectively, in any of their branches, which are contrary to those principles and provisions, are unconstitutional and void.

Any part of the Constitution of a State which is repugnant to, or inconsistent with them, is void.

5. There are provisions of this nature, in the federal Constitution, in the class of powers called "powers *prohibited*, to the general government, and to the several States."

6. These principles and provisions are contained principally in the amendments to the federal Constitution, which were adopted under its authority, to secure its limitations and protect the rights of the several States and the freedom of the people. They are founded on the great principles of civil and political liberty.

7. There are similar provisions in the constitutions of the several States, being called Declarations or Bills of Rights. (b) There is

(a) See Part the First, chap. I. par. 39.

(b) See Part II, Chap. III.

no formal Bill of Rights in the federal Constitution, but there are provisions equivalent thereto incorporated in it.

As to the writ of Habeas Corpus.(c)

8. The important provision of the federal Constitution in regard to the privilege of the writ of *habeas corpus* may be properly first considered under this title.

“The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.” *Cons. of U. S. Art. I. Sect. IX. 2.*

As to trial by jury.

9. The right of trial by jury is thus secured :

“The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where such crime shall have been committed : but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.” *Cons. of U. S. Art. III. Sect. II. 3.*

“In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” *Cons. of U. S. Amendments, Art. VI.* The provision is applicable only to proceedings in the federal Courts, and under the laws of the United States.(d)

“In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury shall be otherwise examined in any Court of the United States, than according to the common law.” *Cons. of U. S. Amendments, Art. VII.* This provision does not apply to the States, but only to the United States.(e)

There are similar provisions in the constitutions of the several States.(f)

Security against unreasonable searches and seizures.

10. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. *Cons. of U. S. Amendments, Art. IV. (d).*

The provision secures to all the protection of their persons and property from unlawful and unreasonable searches and seizures, arrests, or imprisonment, by the government or individuals, through color of law, or otherwise.

(c) See above, chap. IV, par. 8. for an explanation of the terms.

(d) 2 Cow. Rep. 815, 819.

(e) 8 Wend. Rep. 85. 12 Conn. Rep. 243.

(f) See Part II. Chap. III.

As to warrants.

11. To this end, also, the federal Constitution regulates the issuing of warrants.

“And no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” *Cons. of U. S. Amend. Art. IV. (d).*

This clause does not interfere with the operation of the common law, existing in some of the States, or of a statute authorizing the arrest, without process, by a civil officer, or other person, of a criminal found in the act of perpetrating an offence, on just suspicion thereof, or in order to prevent the commission of it.

Trial on indictment of a grand jury.

12. What is the provision of the federal Constitution as to this mode of trial?

“No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger.” *Cons. of U. S. Amendments, Art. V.*

As to the rights of the accused.

13. What provision is there in the federal Constitution as to the rights of the accused in criminal prosecutions?

“In all criminal prosecutions, the accused shall enjoy the right—to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.” *Cons. of U. S. Amendments, Art. VI.*

“Nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself.” *Cons. of U. S. Amendments, Art. V.(g)*

Protection by the process of law.

14. The following provision of the federal Constitution secures to all the protection of the law, in every case.

“Nor shall any person be deprived of life, liberty or property, without due process of law.” *Cons. of U. S. Amendments, Art. V.(h)*

“No man shall be taken,” “no man shall be disscized” without

(g) See Part the Second, chap. III.

(h) See Part II, chap. III.

due process of law, is a principle taken from the Magna Charta of England, infused into our State constitutions, and is made inviolable by the federal government, by the amendments to the Constitution.

As to excessive bail.

15. The federal Constitution prohibits oppression and injustice in regard to the taking of bail.

“Excessive bail shall not be required.” *Cons. of U. S. Amendments, Art. VIII.(i)*

As to fines and punishments.

16. “Excessive fines shall not be imposed; nor cruel and unusual punishments inflicted.” *Cons. of U. S. Amendments, Art. VIII.*

The provision relative to excessive fines and cruel and unusual punishments does not extend to the State governments, but was intended only for the Legislature and Judiciary of the United States.(j)

Security of private property.

17. “Nor shall private property be taken for public use without just compensation.” *Cons. of U. S. Amendments, Art. V.(k)*

This provision does not apply to the several States, but only to the United States.(l) It has been held by the courts that this principle exists, as applicable to all republican governments, independently of constitutions.(m)

Right to bear arms.

18. “A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.”(k) *Cons. of U. S. Amendments, Art. II.*

Quartering of soldiers.

19. “No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.” *Cons. of U. S. Amendments, Art. III.*

(i) See Part II. chapter III.

(j) 12 Serg. & R. 220; 3 Cow. 686.

(k) See Part II. chapter III.

(l) 7 Peter's Rep. 243; 1 Baldw. 220; 8 Wend. 85.

(m) 3 Kelly, 31.

Rights and powers reserved to the States respectively or to the people.

20. There are certain general provisions in the federal Constitution as to the rights and powers reserved to the States severally, and to the people.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S. Amendments. Art. X.*

"The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." *Cons. of U. S. Amend. Art. IX.*

"And nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular State." *Cons. of U. S. Art. IV. Sect. III. 2.*

21. These are called the *reserved* powers and rights of the several States and of the people, because they are reserved or retained out of the powers conferred by the Constitution. Each State retains and possesses all the powers and rights not declared to be in the Union, nor prohibited to the State by the Constitution. They are not derived from the Constitution, by its grant, as their source; but are to be regarded as originally possessed by the several States, and the people, in virtue of their inherent and sovereign authority, and excepted and retained out of the powers actually conferred by the Constitution.

"The powers retained by the States, proceed from the people of the several States, and remain, after the adoption of the Constitution, what they were before, except so far as they may be abridged by that instrument." ⁽ⁿ⁾

The States do not derive their powers from the Constitution, but by their own inherent reserved right can act on all subjects which have not been delegated to the federal government, or prohibited to the States.

Many of the particulars of this chapter are more fully noticed, with explanations and references, in another part of this work, which treats of similar provisions in the constitutions of the several States ^(o)

⁽ⁿ⁾ Opinion of the Supreme Court of the U. S. 4 Wheat. Rep. p. 193.

^(o) See Part II, chapter III.

CHAPTER VIII.

PRESIDENT OF THE UNITED STATES. VICE PRESIDENT. EXECUTIVE OFFICERS OF THE UNITED STATES.

1. "The executive power shall be vested in a President of the United States of America." *Cons. of U. S. Art. II, Sect. I, 1.*

In the distribution of the powers of government, it is provided that there shall be a general executive department; its organization, nature and offices being definitely and permanently determined.

2. There is thus constituted a general executive department in one person. All its attributes are united in him; and it is to be so regarded in its every relation, under the Constitution. It must necessarily, however, be administered, and its manifold and various operations be carried on, through subordinate divisions and agencies. (a)

3. It is co-ordinate with the legislative and judicial departments, forming with them the general government. Deriving its powers directly from the people of the whole Union, under the Constitution, it is distinct and independent, in its proper sphere. (b)

4. The department has for its objects, the discharge of certain functions assigned by the Constitution, and, in general, to execute the laws of the United States. Though its duties are mainly executive, it has an intimate connexion with the other departments of the government, and exercises important qualified powers in reference to them, their acts and proceedings.

Like the other departments of the government, its powers are defined and limited, being those only which are expressly vested in it by the Constitution, or which incidently arise from those so declared, or belong essentially to the nature of its specified duties.

The President is possessed of only enumerated powers; the executive powers being defined by the Constitution, as are the legislative and judicial powers of the government. The name or style given to the office imports of itself no power.

5. The President is otherwise called the Executive, or Chief Executive Magistrate of the United States. There is no title given to him by the Constitution or law. The term Excellency is applied to him from courtesy or etiquette.

6. The President, though possessed of only prescribed and limited authority, may, from the position he occupies in reference

(a) See Part I, chap. III.

(b) See further on in this chapter.

to the other departments of the government, and from the peculiar nature of the powers conferred upon him, be considered the representative and official organ of the nation, in its correspondence, negotiations and acts with foreign countries, and in regard to its affairs in general, to be conducted and transacted in accordance with the Constitution and laws.

7. The President is elected by the whole people of the Union ; the prerequisite qualifications for the office, the mode of election, and the duration of the office, being so constitutionally prescribed, as to be best calculated to secure in him the proper representation of the will of the people; in regard to the manner in which he is to discharge the important duties devolving upon him, and as they may affect the varied interests of the country.

Qualifications for the office of President.

8. " No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States." *Cons. of U. S. Art. II, Sect. I, 5.*

Mode of election.

9. The President of the United States is elected by electors chosen by the people. They are called Presidential electors.

Each State appoints a number of electors, equal to the whole number of Senators and Representatives in Congress to which it may be entitled.

As to the prerequisite qualifications of the electors, it is provided, " No Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector." *Cons. of U. S. Art. II, Sect. I, 2.*

10. As to the manner of appointing them, it is declared : " Each State shall appoint, in such manner as the Legislature thereof may direct, the number of electors" to which it is entitled. *Cons. of U. S. Art. II. Sect. I. 2.*

The actual mode of appointing electors of President, adopted by the States respectively, is diverse in the different States ; being, either by the Legislature of the State ; by the people in districts ; or by the people in the State at large, by general ticket.

11. Congress has power to determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States. *Cons. of U. S. Art. II. Sect. I. 4.*

The electors are to be chosen on the Tuesday next following the first Monday in November, throughout the United States ; the time

directed by the Act of Congress of 1845. Formerly the several States were authorized to fix the days for choosing the electors within the States respectively, within thirty-four days preceeding the first Wednesday in December, by Act of Congress of 1792; and different days were fixed for the purpose. When there shall be no choice on that day, electors may be appointed in such manner as the State may by law provide.

12. The electors are to give their votes on the first Wednesday in December, as determined by the Act of Congress of 1845.

The electors of President are to meet for the purpose of giving their votes in their respective States, as provided by the laws thereof.

Electoral colleges are the Presidential electors, met in their respective States, for the purpose of giving their votes.

Each State may provide by law for filling vacancies in its college of electors.

13. The electors in each State are to vote by ballots for President, and by distinct ballots for Vice President, of the United States; one of whom, at least, shall not be an inhabitant of the same State with themselves. *Cons. of U. S. Amend. Art. XII.*

14. The result of their votes is to be declared in this manner:—Certified lists of the persons voted for in the several colleges of electors are to be transmitted to the President of the Senate of the United States, who shall, in the presence of the Senate and House of Representatives of the United States, open all the certificates, and the votes shall be counted.

The majority of the votes of the whole number of electors in the several States is necessary to elect a President.

15. If no person have a majority of the votes of the whole number of electors, the House of Representatives of the United States is to elect a President from the three persons having the highest number of votes of the electors; the votes of the Representatives to be taken by States; and a majority of all the States to be necessary to a choice.

16. The following is the provision of the federal Constitution as to the mode of election of President, by the electors, or by the House of Representatives of the United States:

“The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the persons voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists, of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate: the President of the Senate shall, in

the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President if such number be a majority of the whole number of electors appointed. And if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice." *Cons. of U. S. Amendments, Art. XII.*

17. If the choice devolve upon the House of Representatives, and they fail to make a choice before the 4th of March next following, the Vice President is to act as President. *Cons. of U. S. Amendments, Art. XII. (c)*

A Vice President may be elected, or chosen by the Senate, as above provided, before an election or choice of President.

18. The day fixed by Act of Congress for opening and counting the votes of the electors, and, in case of its being necessary, for the election of President by the House of Representatives, and of Vice President by the Senate of the United States, is the second Wednesday in February, after the appointment of electors.

19. There is no constitutional provision for the case where there is neither a President or Vice President elected or chosen, in the manner directed by the Constitution. The Act of Congress of 1792 provides that, under such circumstances there shall be a new election. (*d*)

Duration of office.

20. What is the term of office of the President of the United States?

Four years; commencing the fourth day of March after his election. This commencement of the term is provided by Act of Congress, and recognized by the XIIth Art. of the Amendments to the Constitution of the United States.

The seventeenth Presidential term commenced the fourth day of March in the year 1853.

Re-election.

21. A person may be re-elected President of the United States for any number of terms of office successively, under the Constitu-

(c) See head Vice President of the United States, chap. VIII.

(d) See, in this chapter, § 56.

tion. From the commencement of the government, however, all the Presidents who have served a second term in the office, have declined a further re-election; a practice which seems now to be permanently established.

Oath of office.

22. The oath of office of the President is:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States." *Cons. of U. S. Art. II. Sect. I. 8.*

Compensation.

23. There is a provision in the federal Constitution as to the compensation of the President of the United States.

"The President shall, at stated times, receive for his services a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them." *Cons. of U. S. Art. II. Sect. I. 7.*

24. The compensation which the President receives is twenty-five thousand dollars per year, by Act of Congress.

Power as to the army and navy.

25. The power of the President as to the army and navy of the United States, is declared by the Constitution:

"The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States." *Cons. of U. S. Art. II. Sect. II. 1.*

Power as to the militia.

26. By Act of Congress of 1795, the President is authorized to call forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions.†

The President is to be the exclusive judge as to when these exigencies arise, on the occurrence of which the militia may be called forth. The Supreme Court of the United States has decided that the President is the sole and exclusive judge.

27. The militia is not to be considered as "in the service of the United States" until they have reached the place of rendezvous in pursuance of the call of the President; before which they are under the orders of the State governments respectively; as adjudged by the Supreme Court of the United States.

† See under the head "Congress, &c." as to the militia, p.

Consulting power.

28. The President may require the opinions of the heads of the Executive Departments on matters appertaining to their offices respectively.

“He may require the opinion, in writing, of the principal officer in each of the Executive Departments, on any subject relating to the duties of their respective offices.” *Cons. of U. S. Art. II. Sect. II. 1.*

29. The President and heads of Departments constitute what is called the cabinet of the government of the United States. The President often summons these officers to a meeting with him, for consultation, which is called a cabinet council.

Power of pardon.

30. “He shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.” *Cons. of U. S. Art. II. Sect. II. 1.*

31. He may grant pardons for such offences before, as well as after conviction therefor.

Power as to treaties.

32. “He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.” *Cons. of U. S. Art. II. Sect. II. 2.*

33. Treaties § with foreign countries, if made abroad, are negotiated on the part of the United States by ministers appointed by the President (with the advice and consent of the Senate), and who act under his instructions; and if made in this country, they are negotiated between the Secretary of State, under the like instructions, and ministers accredited from foreign governments. When the terms of a treaty are agreed upon by the ministers, plenipotentiaries, or agents employed for that purpose, and approved by the President, he submits it to the Senate. The Senate acts upon it, separately and independently; the President not participating in their deliberations, but rendering them from time to time such information relative to it as they may require. The Senate may wholly approve or reject the treaty; or they may ratify a part; or they may recommend additional or explanatory articles, which, if the President approve, may become the subject of further negotiation with the foreign power; and when the whole is agreed to on the other part, and receives the sanction of the Senate, the ratifications are exchanged between the respective governments, and the treaty becomes obligatory upon both nations.

34. "All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." *Cons. of U. S. Art. VI. 2.*

The several States are prohibited from making treaties.

"No State shall enter into any treaty, alliance or confederation." *Cons. of U. S. Art. I. Sect. X. 1.*

"No State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power." *Cons. of U. S. Art. I. Sect. X. 2.*

Power of appointment.

35. What power has the President to make appointments to office?

"The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." *Cons. of U. S. Art. II. Sect. II. 2.*

The President thus nominates officers, by proposing their names to the Senate, in order to their being appointed. The Senate may approve or disapprove of their being appointed. It approves by passing a resolution that it advises and consents that the President shall appoint a particular person named as nominated, after which he may be appointed and commissioned by the President. If the Senate refuse to pass such a resolution, or declare in the same manner its disapprobation and dissent, the person nominated is said to be rejected by the Senate, and cannot be appointed. (*d*) The Senate has no power to act on any appointment made, or intended, by the President, except on a nomination so presented by him.

The Senate cannot nominate or appoint a person instead of the one nominated by the President, and rejected by it.

The President may withdraw a nomination made by him to the Senate. He may, also, withdraw an appointment and commission from the nominee, even after the nomination has been approved by the Senate and its consent given to the making of the appointment.

An appointment to an office is not complete until a commission therefor has been regularly made and executed. An actual delivery of the commission to the person appointed is not, however, absolutely necessary.

(*d*) See, above, chap. III. title Senate, &c.

36. There is no restriction on the President as to the persons whom he may nominate to office. He may, therefore, renew a nomination which the Senate has rejected.

37. The President commissions all officers of the United States. "He shall commission all the officers of the United States." *Cons. of U. S. Art. II. Sect. III.*

And this includes all such officers, whether appointed by him or not.

38. "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." *Cons. of U. S. Art. II. Sect. II. 3.*

It has been doubted whether, where a person has been commissioned by the President, under this provision of the Constitution, and at the next session the Senate has not advised and consented to the appointment, the President can afterwards thus commission him again until the end of the following session of the Senate. In practice, the President has exercised this power, it being considered that a vacancy has happened.

Where an office has been created by Act of Congress which is not filled during the existing session of Congress, or of the Senate, the President cannot make an appointment to the office during the recess of the Senate, unless special authority therefor is given to him by the Act. It is not the case of a vacancy happening during the recess of the Senate.

39. The President has not power to create offices, and make appointments to them. It is implied by the constitutional provision that the offices to which he may make appointments, shall be existing ones, under the Constitution, or the laws of the United States.

40. The President alone has power to remove officers, in general, who were appointed by him, whether such appointments were with the advice and consent of the Senate, or otherwise.

The power of removal has not been expressly given by the federal Constitution to the President; the general opinion, however, has been that it is necessarily implied in the power of appointment, where the contrary is not provided in terms; and the practice has been in conformity thereto.

The President has, thus, the power of *creating* vacancies and appointing officers to fill them. Officers so appointed in the recess of the Senate, continue in office until the next session of Congress.

41. There are no officers of the United States who hold their offices for life, during good behaviour, except judicial officers, who can be removed only by impeachment.

42. All officers of the United States, appointed by him, by and with the advice and consent of the Senate, hold their offices at the

will of the President, as to their removal by him, except where it is otherwise provided by the Constitution. This is so, under the construction and practice above stated.

43. With regard to all offices, the appointment to which is confided to the President by the federal Constitution, Congress cannot give any duration of office which is not subject to his power of removal.

44. Under the power of Congress as to the appointment of "inferior officers," it may prescribe the term of office, and the manner in which the removal, as well as the appointment, shall be made.* *Cons. of U. S. Art. II. Sect. II. 2.*

Power as to legislation.

45. The President has, by the Constitution, certain powers as to bills passed by Congress, and, in consequence, in regard to the legislation of the government.

He has the power of approving or disapproving of every bill, and joint order, resolution or vote, passed by Congress, (except on a question of adjournment); if approved and signed by him, it becomes a law; if not approved by him, it can only become a law by being reconsidered and repassed by two-thirds of both Houses of Congress in the manner prescribed by the federal Constitution.(e)

46. The President's power of disapproving such a bill is called his *veto* power. The word *veto* means "I forbid."

Power to convene Congress.

47. "He may, on extraordinary occasions, convene both Houses of Congress, or either of them." *Cons. of U. S. Art. II. Sect. III.(f)*

Power to adjourn Congress.

48. What power has the President as to adjourning Congress?

"He may—in case of disagreement between them" (the two Houses of Congress) "adjourn them to such time as he shall see proper." *Cons. of U. S. Art. II. sect. III.(f)*

Communications to Congress.

49. What is the duty of the President as to giving information to Congress of the state of the Union?

"He shall, from time to time, give to Congress information of

* See further on in this chapter, head "Executive Officers, &c." par. 69.

(e) See more fully under the title Congress of the United States, above, chapter III.

(f) See above, chapter III.

the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." *Cons. of U. S. Art. II. Sect. III.*

The President is not obliged to communicate to Congress, or to make public, his official proceedings, or the papers or documents in his possession, when he deems it inexpedient for the country so to do.

The *messages* of the President are his written communications to Congress, or to each House thereof, at any time. It is usual for the President to send a general message to Congress at the commencement of each session thereof, giving a statement of the transactions and affairs of the government, of its relations with foreign nations, and of the state of the country during the preceding year, and recommending to Congress such measures or subjects of legislation as he deems expedient.

Reception of ambassadors and ministers.(g)

50. The Constitution vests in the President express powers in this respect.

"He shall receive ambassadors and other public ministers." *Cons. of U. S. Art. II. Sect. III.*

It is meant, by this provision, that he is authorized to acknowledge as such, ministers and ambassadors sent by other nations to this government.

Execution of the laws.

51. The general duty of the President in regard to the execution of the laws, is declared by the Constitution.

"He shall take care that the laws be faithfully executed." *Cons. of U. S. Art. II. Sect. III.*

52. This clause of the federal Constitution does not confer on the President any specific power not otherwise vested in him.

Impeachment of the President.

53. What is the provision of the federal Constitution as to the impeachment of the President of the United States?

"The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." *(h) Cons. of U. S. Art. II. Sect. IV.*

(g) See explanations and observations further on in this chapter.

(h) See, above, as to Impeachments, under the head "Senate of the United States," chapter III.

Vacancy in the office.

54. The Constitution directs how any vacancy in the office of President is to be supplied.

"In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of the removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President be elected." *Cons. of U. S. Art. II. Sect. I. 6.*

On the occurrence of any of the emergencies mentioned in this clause of the Constitution, the person upon whom the duties of the office devolve, becomes the President of the United States, to hold the office during the time specified. In one instance, on the death of a President, a few months after his inauguration, the then Vice President immediately became the President, and had vested in him all the powers of the office during the unexpired time of its regular term. The circumstances of the case illustrated most clearly the adaptness of our Constitution for the greatest emergencies contemplated by it, and the facility with which the most important operations of the government are carried on.

55. The Act of Congress of 1792 provides, that in case also of such a vacancy of the office of Vice President, the President *pro tempore*, of the Senate first, and then the Speaker of the House of Representatives of the United States, shall act as President.

56. Provision is made, also, for the case of a failure to elect or choose either a President or Vice President of the United States.

The Act of Congress has provided that there shall be a new election of these officers, in such an event. There are doubts entertained whether Congress has constitutional power to make such a provision. (*i*)

Personal relations.

The incumbent of the office of President, regarded as a person separate from his official authority and duty, is merely a private citizen, subject to the obligations and duties of a citizen under the laws of the country.

VICE PRESIDENT OF THE UNITED STATES.

57. The Constitution provides for the existence, in the government, of a Vice President of the United States, with declared powers, some of which to be exercised certainly, and others contingently.

(*i*) See above, in this Chapter, § 19.

It is directed that he shall be elected by electors chosen by the people, in the same manner as the President; or in case of the failure of the people so to elect, that he shall be chosen by the Senate of the United States, from the two highest on the list of persons voted for by the electors. *Cons. of U. S. Art. II. Sect. I. and Amendments, Art. XII.* The election of the President and Vice President is particularly treated of in the previous part of this chapter.

58. The prerequisite qualifications for the office of Vice President are declared by the Constitution.

"No person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States." *Cons. of U. S. Amend. Art. XII.*

59. The term of office of the Vice President is four years, commencing from the fourth day of March after his election. It is the same as that of the President.

60. His compensation is eight thousand dollars per year, as fixed by Act of Congress. There is no constitutional provision determining it.

61. "The Vice President of the United States shall be the President of the Senate, but shall have no vote, unless they be equally divided." *Cons. of U. S. Art. I. Sect. III. 4.(j)*

62. The office of President of the United States may devolve upon the Vice President, in certain cases.

"In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Vice President." *(k) Cons. of U. S. Art. II. Sect. I. 6.*

"And if the House of Representatives shall not choose a President, whenever the right of choice devolves upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President." *Cons. of U. S. Amend. Art. XII.*

63. The Constitution provides that the Vice President may be impeached, and in what manner. *Cons. of U. S. Art. II. Sect. IV.* See above, in this chapter, par. 53, and chapter III. head Impeachment.

64. What provision is made by law for the case of a failure to elect or choose either a President or a Vice President, in the manner prescribed by the Constitution?

The Act of Congress of 1792 provides that there shall be a new election. *(l)*

(j) See Senate of the United States, above, Chapter III.

(k) As to the provision in the case of the removal, death, &c. of both the President and Vice President, see this chapter, head "President," p. 153.

(l) See title "President," in this chapter, p. 153.

It is usual for the Vice President to withdraw from the Senate previously to the adjournment of the session, in order to afford an opportunity to that body to choose a President *pro tempore*; so that there may be such an officer during the recess of the Senate.

If the Vice President succeed to the office of President, he continues in it until the expiration of the term for which the President was elected; unless in case of a temporary disability of the President.

In case of a vacancy in the office of Vice President only, by resignation, death, removal or disability, a Vice President cannot be elected until the regular period. There is no provision in the Constitution for such an election.

In case of vacancies in the offices both of President and Vice President, by removal, death, resignation or inability, the person appointed by Act of Congress continues to act as President until the disability be removed, or a new election of President; provision for holding such election being made by Congress. The Act of Congress also provides that, where there has been a failure to elect, in the manner prescribed by the Constitution, either a President or Vice President, a new election shall be held for those officers before the regular period; the person appointed by law continuing to act as President in the mean time. See, in this chapter, § 54-6.

EXECUTIVE OFFICERS OF THE UNITED STATES.

65. The officers of the general government may be classed or divided, as judicial(*m*) or executive; and the executive as civil or military.

66. Offices held under the United States are created either by the federal Constitution, or Acts of Congress. Offices not created by the Constitution can be established only by Acts of Congress, passed in accordance with the Constitution.

Appointment and removal.

67. The subordinate executive officers of the United States are appointed, as it is directed by the federal Constitution.

The President of the United States "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone,

(*m*) See Judiciary of the United States, further on, Part I. Chap. IX.

in the Courts of law, or in the heads of departments." *Cons. of U. S. Art. II. Sect. II. 2.*

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session." *Cons. of U. S. Art. II. Sect. II. 3.*

68. Executive officers, appointed by the President, whether with the advice and consent of the Senate, or otherwise, are, in general, liable to be removed from office at his pleasure or discretion. They hold their offices at his will.

69. In those cases, however, in which Congress, agreeably to the Constitution, vests the appointment of "inferior officers" in the President alone, in the courts of law, or in the heads of departments, Congress may provide that the persons so appointed shall hold their offices for certain terms of year, not removable at the will of the appointing power. When Congress so provides for the appointment of such officers, it may direct in what manner the appointments shall be made.†

70. The power of appointment vested, by the Constitution, in the President, cannot be interfered with by Act of Congress; and it is so with respect to the power of removal from office, incident to that of appointment. Offices may be created by Acts of Congress, but the appointments thereto cannot be provided for otherwise than as authorized by the Constitution.

Commissions.

71. The Constitution provides that the President "shall commission all officers of the United States." *Cons. of U. S. Art. II. Sect. III.*

72. Where a commission for an officer, who does not hold his office at the will of the President, is signed by the President and transmitted to the Secretary of State, to be sealed and recorded, it is irrevocable; the appointment is complete; and the Secretary cannot withhold the commission from the officer, though directed so to do by the President.

A commission is not the appointment, but only evidence of it; and a delivery of the commission is not necessary to constitute the appointment.

Religious tests.

73. "No religious test shall ever be required as a qualification to any office, or public trust, under the United States." *Cons. of U. S. Art. VI. 3.*

† See the remarks on this subject under the head "President of the United States," above, in this chapter, par. 44, & pp. 179, 180.

Oaths off office.

74. "And all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution." *Cons. of U. S. Art VI. 3.*

Impeachment.(n)

75. What is the provision of the federal Constitution as to the impeachment of officers of the United States?

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." *Cons. of U. S. Art. II. Sect. IV.*

By civil officers, in this provision, are meant all public officers, except military and naval officers, and members of Congress.

Executive Departments.

76. What subordinate executive departments of the general government are there?

The principal departments are, the Department of State, the principal officer of which is the Secretary of State; the Department of the Treasury, under the Secretary of the Treasury; the Department of War, under the Secretary of War; the Department of the Navy, under the Secretary of the Navy; and the Post Office Department, under the Post Master General; and the Department of the Interior, under the Secretary thereof. These officers are called the Heads of Departments.

77. The Secretaries of Departments and the Post Master General are appointed by the President, with the advice and consent of the Senate of the United States; and they are removable by him at his pleasure. In case of a vacancy, the President may authorize any person to perform the duties of Head of Department until a successor be appointed, or such vacancy be filled.

78. The Secretaries of Departments and the Attorney General(o) constitute what is called the cabinet of the President of the United States. They are his constitutional advisers.(p)

79. Neither of the Secretaries or Heads of Departments has a seat in Congress. Their powers and duties are only executive, defined by Acts of Congress.

80. These Departments are recognized in the federal Constitution, and are established, and their powers and duties defined, by

(n) On impeachments generally, see title Senate of the United States, head Impeachments.

(o) As to the Attorney General, see Judiciary of the United States, Part I. chapter IX.

(p) See, above, p. 100.

Acts of Congress. Other departments, for similar objects in general, may be created by law. The salaries of the Heads of Departments are fixed by law.

81. These departments are designed to aid the President of the United States in the discharge of the various duties belonging to, and in reference to the important and extensive operations connected with, the general executive power of the government. The officers having charge of them manage the affairs of the departments respectively, in general, under the instructions and directions of the President. In some instances, however, there are duties specially imposed upon them by Acts of Congress, which are to be performed by them independently and in the exercise of their discretion.

In some of these principal departments there are branches thereof, termed bureaus, to which particular portions of their general business respectively are assigned.

Each of the great departments has an official seal; and copies of their records, duly authenticated, are, by Act of Congress, made competent evidence. It is also so provided with respect to some of the bureaus.

The heads of the principal departments are authorized, by Act of Congress, to appoint the clerks thereof respectively, except that some of the principal clerks are appointed by the President.

Congress may, by law, vest the appointment of such inferior officers as they think proper, in the heads of departments. *Cons. of U. S. Art. II. Sect. II. 2.*

State Department.

82. The duties, in general, of the Secretary of State, through his department, as they are declared by Act of Congress, are to have the custody of the originals of all the laws, treaties and other public documents of the United States; to record the same; to furnish authentic copies of the same when duly required; to keep the great seal of the United States, and to affix it, with his signature, to all commissions and other documents requiring it, there being issued from this department commissions to all civil officers of the United States, appointed by the President, by and with the advice and consent of the Senate, or by the President alone; to conduct the political and civil relations of the government with foreign powers, as to negotiating treaties and other regulations and arrangements therewith, and in reference to the memorials or applications of foreign ministers, agents or persons, either in this country, or abroad through the ministers of the government in foreign countries, as ambassadors, envoys, *charges des affaires*, or consuls; and to perform various specific duties, relative to the department, and under the direction of the President of the United States. The patent office was a branch of this department, as were,

also, the pension office, through which pensions for military services are allowed and paid, in pursuance of Acts of Congress ; but these branches of the public affairs are now under the supervision of the Department of the Interior.

There are in this department a diplomatic bureau, a consular bureau, and a domestic bureau.

War Department.

83. As to the duties, in general, of the Secretary of war, he has the general superintendence, under the direction of the President, of the military affairs of the government.

84. *Armies.* Acts of Congress providing for the raising and supporting of armies, and for their government and regulation, are carried into effect by the President, through this department. Soldiers for the army are thus enlisted, and officers appointed ; its operations in war, and its disposal in time of peace are so directed, as all military commissions and orders are issued. In the same manner, also, are the affairs of the Military Academy of the United States directed, and its commandant, professors and cadets appointed.

There belong to this department the quarter-master's department, the engineer department, the ordnance department, a subsistence department under the charge of the commissary-general, a pay department, a medical department, and a bureau of topographical engineers.

Treasury Department.

85. It is the duty, in general, of the Secretary of the Treasury to manage the fiscal operations of the government ; having cognizance of all matters connected with the national revenue, and the supervision of the custom houses, and their officers. He is required by law to make a report annually to Congress of the fiscal affairs of the nation, containing a statement of receipts and expenditures, and an estimate of future revenue.

In the organization of this department there are various subordinate officers, having distinct offices or bureaus ;

1. Five or more *Auditors*, whose business it is to examine all accounts with the treasury and certify the balances ; and for this purpose certain classes of accounts are assigned to each auditor.

2. There are two or more *Comptrollers*, whose duty it is to revise the accounts certified by the different auditors, make a record of the balances, and certify them to the Register.

3. It is the duty of the *Register* to preserve these accounts thus certified to him ; and also to keep an accurate account of all the receipts and expenditures of the government.

4. It is the duty of the *Treasurer* to receive and keep the public money, until duly ordered to disburse it ; which can only be upon

warrants drawn by the Secretary, countersigned by the proper Comptroller and Auditor, and recorded by the Register.

5. It is the duty of the *Solicitor* of the treasury to be the legal adviser of the department, and to superintend all litigation connected therewith.

The Commissioner of Customs has the superintendence of the collection of the customs and duties on foreign imports, and matters relative thereto. This branch of the department was established by Act of Congress in 1849.

The general Mint of the United States, with its several branches, is under the direction of this department; the appointments of the officers and agents thereof being made by the President, or Secretary of the Treasury, as provided by Act of Congress.

In general, all accounts and claims against the United States must be examined and adjusted by the proper officers of the Treasury Department before they can be paid. This can be done where there is authority given therefor by Act of Congress. Such a claim cannot be otherwise paid, except by a special Act of Congress. The United States cannot be sued; there being no provision in the federal Constitution authorizing it.

In the year 1855 it was enacted by Congress that there should be a Court of Claims, with jurisdiction to hear and determine all such claims founded upon any Act of Congress, regulation of any executive department, or contract with the general government, which may be suggested to the Court by petition; and also all claims referred to it by either House of Congress. The organization and jurisdiction of this court are made the subject of notice in treating of the Judiciary of the United States.

There are assistant treasurers in Boston, New York, Philadelphia, St. Louis, and Charleston respectively. In these subordinate treasuries monies are deposited by collectors of customs, and by other officers and agents, subject to the orders and control of the general government.

Navy Department.

86. The Secretary of the Navy has the general superintendence of the navy of the United States, its operations and affairs, under the instructions of the President.

The Acts of Congress for providing and maintaining a navy, and for its government and regulation, are carried into effect and enforced by the President, through this department; enlistments and appointments therefor are thus made, and its operations directed, as all naval commissions and orders proceed through it. There have been created, within this department, a bureau of navy-yards and docks, a bureau of construction, equipment and repair, a bureau of provisions and clothing, a bureau of ordnance and hydrography, and a bureau of medicine and surgery.

Post Office Department.

87. The duties, in general, of the Post Master General, are— to make contracts for carrying the mail on the routes established by Acts of Congress, to prescribe regulations for the various Post Offices throughout the country, to superintend the receipt and collection of the rates of postage on letters and papers, as fixed by law, and the business of the department generally.

The principal officers and clerks in the departments are appointed by the Heads of the departments respectively, under the direction of the President of the United States. In some instances the inferior clerks and agents are appointed by them at their discretion.

Department of the Interior.

88. This Department was established by Act of Congress, in 1849, to be under the charge of a Secretary, and to embrace certain branches of business, and public affairs, which were formerly connected with some of the other departments; as the care, survey and sale of the public lands, including mines, the allowance of pensions, according to law, and the granting and issuing of patents; together with other matters concerning the domestic policy of the country. The management of Indian affairs, the taking of the census, and the construction and care of the public buildings, belong to it.

The bureaus connected with this department are the Land Office, the Patent Office, the Indian Office, the Pension Office, the chief officers of which are Commissioners respectively, and the Census Office, the chief officer of it being the Superintendent of Census.

Ambassadors.

89. Who are ambassadors?

Ministers of government, appointed by the President, by and with the advice and consent of the Senate, to reside in foreign countries, through whom the correspondence of our government with foreign powers is conducted, treaties are negotiated, and matters connected with our foreign political relations are transacted. *Ministers Plenipotentiary*, and *Envoys*, are similar officers accredited to foreign governments, on special occasions and for particular purposes. *Charges des affaires* are such of an inferior grade, through whom are transacted matters of less importance and of an ordinary nature, with other nations.

90. The rights and privileges of ambassadors and ministers of foreign countries are determined by the law of nations. They are considered as representatives of the government or nation which sent them; and are not subject to the laws of the country to which they are sent. This privilege generally extends to them, their domestics and servants.

Ambassadors and ministers from foreign nations resident in this country are not amenable to its laws. They cannot be prosecuted or sued, or made answerable in any court of justice here. If they commit offences here, our government may demand of their sovereign or nation that they be recalled to their own country and punished there. It is held by some authors, that if a foreign ambassador conspire with others to overturn the government of the country to which he is sent, he may be treated as a traitor, and punished accordingly under its laws. These privileges extend to the domestics and servants of foreign ministers.

By Act of Congress, any writ or process issued by a federal or State court, against any foreign ambassador or minister, or his domestic or servant, is void; and the person ordering it, and the officer executing it, are liable to be punished. This provision does not protect such domestic or servant as to debts contracted before entering into such service.

“As ambassadors and ministers are the representatives of their sovereigns, and requisite for negotiations and foreign intercourse, their persons, by the consent of all nations, have been deemed inviolable. If, however, ambassadors should be so regardless of their duty, and the object of their privileges, as to insult or openly attack the laws or government of the nation to which they are sent, their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall, or they may be dismissed, or be required to depart within a reasonable time. The writers on public law go still further, and allow force to be applied to confine or send away an ambassador, when the safety of a State, which is superior to all other considerations, absolutely requires it, arising either from the violence of his conduct or the influence and danger of his machinations.

This is all that can be done; for ambassadors cannot, in any case, be made amenable to the civil or criminal jurisdiction of the country.

In supposition of law, an ambassador is considered as if he were out of the territory of the foreign power; and it is an implied agreement among nations that an ambassador, while he resides within the foreign state, shall be considered a member of his own country, and the government he represents has exclusive cognizance of his conduct and control of his person. An ambassador is also deemed under the protection of the law of nations, in his passage through the territories of a third and friendly power, while upon his public mission, in going to and returning from the government to which he is deputed. To arrest him under such circumstances would be a breach of his privilege as a public minister. The attendants of an ambassador, attached to his person, and the effects in his use, and the house in which he resides, are under his protec-

tion and privilege, and equally exempt from the foreign jurisdiction. The distinction between ambassadors, ministers plenipotentiary, envoys extraordinary, and resident ministers, relates to diplomatic precedence and etiquette, and not to their essential powers and privileges." 1 *Kent's Commentaries*, p. 38-40.

By the federal Constitution, the Courts of the United States have jurisdiction in all cases affecting ambassadors, and other public ministers; the jurisdiction of the Supreme Court of the United States in cases *against* them being exclusive. See *Part I. Chap. IX.* on the Judiciary of the United States. *Cons. of U. S. Art. III. Sect. II. 1.*

There are ambassadors and other such ministers accredited, by foreign powers, to our government. They are received and acknowledged by the President of the United States, and generally reside at the seat of government.

Consuls.

91. Consuls are officers appointed by the President, by and with the advice and consent of the Senate, residing in foreign nations and the chief cities and towns thereof, to attend to the commercial interests of our country, and to the rights of our merchants, seamen and citizens, residing or visiting there, and through whom any correspondence of our government with the functionaries of foreign nations on these subjects is carried on. The acknowledgment and proof of commercial papers and documents are taken by them, certificates of citizenship made out by them, and various other matters relative to trade and commerce performed by them. There are consuls in this country appointed by foreign governments.

92. There are Acts of Congress in relation to the powers and duties of consuls and vice consuls of this government in foreign countries. They are specially authorized to receive the protests of masters of vessels, and others in regard to American commerce; and it is provided that consular certificates under seal shall receive faith and credit in the courts of the United States. It is likewise made their duty, when the laws of the country in which they reside permit, to administer on the personal estate of American seamen dying within their consulates, and leaving no legal representatives; and to take charge of and secure the effects of stranded vessels, in the absence of the master, owner or consignee; and to provide for destitute seamen within their consulates, and to send them, at the public expense, to the United States; and masters of American vessels are required, on arrival at a foreign port, to deposit their registers, sea letters, and passports, with the consul, vice consul, or commercial agent, if any, at the port; though this injunction only applies where the vessel shall have come to an entry, or transacted business at the port.

It has been decided in our courts, that a foreign consul, duly recognized by our government, may assert and defend, as a party, the rights of property of individuals of his nation, in the courts of the United States, and may institute suits for that purpose, without any special authority from the party for whose benefit he acts. But the courts have not gone so far as to recognize the right of a consul to receive actual restitution of the property or its proceeds, without showing some specific power for the purpose from the party in interest.

By the Constitution of the United States, jurisdiction in cases affecting consuls is vested in the federal courts ; and in cases against them it is, by Act of Congress, exclusive of the State Courts. *Cons. of U. S. Art. III. Sect. II. 1* ; and see *Part I. Chap. IX.* on the "Judiciary of the United States."

Consuls have certificates of their appointment, and must be acknowledged by the government within whose sovereignty they reside, before they can act. When a consul is received and acknowledged by the government to which he is sent, it issues to him an official writing, which is called an *exequatur*, declaring the assent of that government to regard him in such a character. And the powers of a consul may be annulled by the government to which he is sent, or in whose country he resides. A government may appoint as its consul in a foreign country, either one of its own citizens or a subject of that country. The consuls appointed by the government of the United States are paid, generally, by fees of office ; in some cases they receive salaries.

Foreign consuls are not entitled to the rights and privileges of ambassadors and other ministers, as to exemption from the operation of the laws of the country in which they reside.

"Consuls are commercial agents, appointed to reside in the seaports of foreign countries, with commissions, to watch over the commercial rights and privileges of the nation deputing them. The establishment of consuls is one of the most useful of modern commercial institutions. Consuls have been multiplied and extended to every part of the world where navigation and commerce can successfully penetrate ; and their duties and privileges are now generally limited and defined in treaties of commerce, or by the statute regulations of the countries which they represent. In some places they have been vested with judicial powers in disputes between their own merchants in foreign ports. But no government can vest its consuls with judicial power over its subjects in a foreign country, without the consent of the foreign country, founded on treaty ; and there is no instance in Europe of the admission of criminal jurisdiction in foreign consuls.

"The particular powers and duties prescribed to consuls by our Acts of Congress are similar to those of British consuls, and of

consuls under the convention between this country and France ; and they are in accordance with the usages of nations, and not to be construed to be in exclusion of others, resulting from the nature of the consular appointment.

“ Consuls are to be approved and recognized in the usual form, and if any consul be guilty of illegal or improper conduct, he is liable to have his *exequatur*, or the written recognition of his character, revoked, and to be punished according to the laws of the country in which he resides as consul ; or he may be sent back to his own country at the discretion of the government which he has offended.

“ A consul is not such a public minister as to be entitled to all the privileges appertaining to that character ; nor is he under the special protection of the law of nations. He is entitled to privileges to a certain extent, as for safe conduct, but he is not entitled to the *jus gentium*, or right of sovereign nations. It may be considered as settled law, that consuls do not enjoy the protection of the law of nations, any more than other persons who enter the country under a safe conduct. In civil and criminal cases, they are equally subject to the laws of the country in which they reside.”
1 *Kent's Commentaries on American Law*, p. 40-45.

Districts of the United States.

94. Territorial districts or divisions are adopted for administering and executing the laws of the United States, called judicial districts, consisting each of one State, or parts thereof. (*p*) These divisions are also used for military and other purposes.

The officers of the United States in each of these districts are, a judge of the District Court of the United States, a District Attorney,, and a Marshal, with his deputies.

Territorial Governments.

95. The governments of the territories of the United States established by Act of Congress, in pursuance of the constitutional power of Congress to make all needful rules and regulations respecting such territories, being dependent upon the government of the Union, it is generally provided that the principal officers thereof shall be appointed by the President. There are usually thus appointed, by and with the advice and consent of the Senate of the United States, a governor and secretary for each of those Territories. (*r*)

(*p*) See head “ Courts of the United States,” Part I. chapt. IX.

(*q*) For a notice of these officers, see “ Judiciary of the United States,” farther on, Part I. chapt. IX.

(*r*) See the head “ Territorial Governments,” chapters I. III.

Titles of office, &c.

96. "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State." *Cons. of U. S. Art. I. Sect. IV. 7.*

There is no honorary title or term of address given, by the Constitution or law, to the President, Vice President, any member of Congress, or civil officer of the United States. Certain customary titles of this kind are applied to them, from courtesy or etiquette.

Provisions relative to executive officers and clerks.

97. By Act of Congress, every clerk and other officer in any of the departments of government, is required to take an oath to support the Constitution of the United States, and well and faithfully execute the trust committed to him.

It is provided by several Acts of Congress, that any officer of the United States, or person holding any place of trust or profit under or in connection with any executive department of the government, or under the Senate or House of Representatives, or any Senator or Representative, who shall act as agent or attorney for prosecuting any claim against the United States, or aid or assist in the prosecution of any claim, or receive any share of any claim for having aided in its prosecution, shall be liable to be indicted therefor, and, on conviction, to fine and imprisonment.

By the same Acts, also, it is enacted that for bribery, or the unlawful influencing of members of Congress, or any person holding any office of trust or profit, as aforesaid, the person giving and the person receiving the bribe, are each guilty of a high crime and misdemeanor, and upon conviction thereof shall be punished by fine and imprisonment.

It is also so provided that no officer in any department of government, or branch thereof, or any other person whose salary, pay, or emoluments, is or are fixed by law, or by the regulations of any department or office, shall receive any additional pay or extra allowance or compensation whatever, for any service or duty, unless the same shall be authorized by law and an appropriation be explicitly made therefor.

CHAPTER IX.

JUDICIARY OF THE UNITED STATES.

1. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." *Cons. of U. S. Art. III. Sect. I.*

These Courts constitute the judiciary or judicial department of the general government.

2. What is the nature in general of the powers and duties of the judicial department of the general government?

It is that branch of the general government to which is intrusted the power of applying and expounding the laws, in the administration of justice, according to the jurisdiction given to it.

It is vested with the power to administer justice, under the Constitution and laws of the United States; and, consequently, in the exercise of its proper jurisdiction, to interpret and enforce the provisions of the Constitution.

It is to be considered as instituted by the federal Constitution, in accordance with the preamble thereof, in order "to establish justice."

3. It is a co-ordinate department of the general government, in the exercise of its proper powers independent of the other departments thereof.

It is the representative of the people of the Union, having its authority from them through the Constitution, as the source of power.

The judicial power of the United States is thus separated and made independent, and not blended with one or both of the other departments of government. It is itself a substantive, necessary part of the general government. Under our system, the powers of government are distributed amongst three several departments, each acting in its proper sphere independently of each other, and yet all mutually connected.(a)

4. The judicial department is limited, as to its powers and jurisdiction.

The government of the United States being limited to certain national objects, as provided in the federal Constitution, this limitation applies to the judicial as to the other departments.

The same principles and rules for the construction of the federal

Constitution are proper in regard to all the departments of the general government.

5. The judiciary of the United States has the power, in the administration of justice, according to its jurisdiction, to determine the validity or invalidity of a law of Congress, or of an Act or proceeding of the Executive Department of the general government, in respect to the conformity thereof to the federal Constitution.

The right of courts of justice, in the due administration of the law, to pronounce or treat legislative Acts as void, on the ground of their unconstitutionality, rests upon the soundest and clearest principles.

The powers conferred by the federal Constitution upon any of the departments of government are delegated and limited. Every Act of delegated authority contrary to the commission under which it is exercised must be void; and no Act of Congress contrary to the Constitution, which is the commission from which every department of the government derives its authority, can therefore be valid.

The Constitution is the declared will of the people, and it cannot be intended that the representatives of the people in the national Legislature should be enabled to substitute their will in the place of the will of their constituents; and to render a construction by them of their own powers conclusive upon the other departments.

The interpretation and application of the laws, in the administration of justice, is the peculiar province of judicial courts; and as the federal Constitution is in fact a fundamental law, and the courts are bound to regard it as such, it is as much their duty to ascertain its meaning, as to ascertain the meaning of any Act proceeding from the Legislature.

If in any case there should be found an irreconcilable variance between a law and the federal Constitution, that which has the superior obligation and validity ought, of course, to be preferred; the Constitution should prevail over the law, and the intention of the people themselves be carried into effect, instead of the intention of their agents or representatives.

According to these propositions, the people are regarded as superior to both the judicial and the legislative power of the government; and when the will of the Legislature, declared in the law, stands opposed to the will of the people, declared in the federal Constitution, the judges are to be governed by the latter rather than by the former; and courts of justice are bound to regulate their decisions by the fundamental law in the Constitution, over which the Legislature has no control, rather than by those laws which it may at any time repeal or alter, and which derive their validity and effect from the Constitution.

It has the power, also, of deciding upon the validity of a constitutional provision, or law of a State, in regard to the accordance thereof with the Constitution of the United States.

By the federal Constitution it is provided that the judicial power of the United States shall extend to all cases arising under the Constitution, law and treaties of the United States; and as these must be regarded as the supreme law of the land, the federal Courts have the right, as it is their duty, in the ordinary exercise of their jurisdiction, to declare and treat as void the Constitution, laws and proceedings of a State so far as, in their judgment, they are repugnant thereto.

7. As to the authority of the decision of the Supreme Court of the United States, in such cases, involving the interpretation of the federal Constitution, it must, necessarily, be final and conclusive. (b)

8. The federal judiciary is thus made the authorized expounder and interpreter of the federal Constitution, as to all cases which come before it in the course of the administration of justice.

9. The judicial department, then, is an important constitutional check upon the other branches of the general government, and the means of preventing them from transcending their proper powers; as also of keeping the States severally within their peculiar spheres, as parts of the system of the Union.

10. These highly important functions of the judiciary render it necessary that its independence should be secured by constitutional provisions. (c)

Jurisdiction in general.

11. "The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty, or maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects." *Cons. of U. S. Art. III. Sect. II.*

"The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or

(b) See, in this chapter, the head "Supreme Court of the United States."

(c) See, in this chapter, the heads "Tenure of Office" and "Compensation."

by citizens or subjects of any foreign State. *Cons. of U. S. Amendments, Art. XI.*

12. By "the judicial power of the United States," mentioned in these provisions of the Constitution, is meant the power or jurisdiction which, in whole or part, may be conferred by Act of Congress on all the judiciary of the United States, or any part thereof, or on any court or tribunal, in pursuance of the federal Constitution.

These provisions include all the cases of which the United States courts or Judiciary can entertain jurisdiction.

They embrace the whole power of the Judiciary or judicial department of the United States, which is thus defined and limited by the federal Constitution.

All the objects to which the judicial power can be extended are thus specifically enumerated and expressed in the federal Constitution.

This jurisdiction may be apportioned among several federal Courts by Congress, at its discretion; except that the Constitution expressly provides that the Supreme Court shall have *original* jurisdiction in some particular enumerated cases.

The jurisdiction conferred upon the federal Judiciary, by these provisions, is both original and appellate.

13. What is meant by the jurisdiction of a court?

When a case is in the power of a court, to be tried or disposed of according to law, it is said to have jurisdiction of it.

14. The jurisdiction of a court may be considered, in regard to the nature of the cases under its cognizance, as civil or criminal; and, in regard to the nature of its power, as original or appellate.

15. A court has original jurisdiction of a case, when the first proceedings in it may be commenced in that court.

16. A court has appellate jurisdiction of a case when the proceedings in the case must be commenced in some other Court, and may be thence transferred for revision and correction to that court. A court has appellate jurisdiction of a case when the case may be brought before it by appeal from a lower court.

17. The most usual mode of exercising appellate jurisdiction is by Writ of Error, or by Appeal. A Writ of Error is a common law process for the removal of a suit from an inferior court, but which removes nothing for re-examination but the law of the case, as the case appears on the record.

18. An Appeal is a proceeding by which the cause is entirely removed from an inferior court, and the facts as well as the law therein are subjected to a review and retrial.

19. It is under the general *appellate* power vested in the federal Courts that cases within their cognizance may be removed from a State court, and before as well as after judgment in the case; and the right is exercised, as directed by Acts of Congress.

20. A *Certiorari* is a common law writ from a superior to an inferior court, commanding the latter to *certify* the record of a case to the latter court, for revision and correction; on which, generally, the case is reviewed by the superior court only on matter of law.

21. A writ of *Habeas Corpus cum causa* is also a common law process, issued by a superior to an inferior court, commanding the latter to have a certain cause brought before the former, where it may be tried on the facts.

22. What is the provision of the federal Constitution as to the re-examining of facts tried by a jury?

"And no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." *Cons. of U. S. Amend. Art. VII.*

By this provision the right of trial by jury is secured in all important cases; and the verdict of a jury cannot be reversed on matters of fact by the Supreme Court, or any other court of the United States.

23. There are nine classes of cases stated in the federal Constitution, to which the judicial power of the United States may be extended.

24. I. "To all cases, in law or equity, arising under this Constitution, the laws of the United States, or treaties made, or to be made, under their authority."

As the Constitution, laws and treaties, of the United States, are the supreme law of the land, and these cases refer to national objects, it is proper that the jurisdiction of the national judiciary should be extended to them. The Constitution having been formed by all the people of the Union, the construction and operation of it ought to be ascertained by an authority derived from them. The necessity, also, of preserving uniformity in the interpretation of the national Constitution and laws, throughout the whole country, renders this jurisdiction indispensable.

The jurisdiction of the federal courts under this clause is in cases at law or equity, and of a civil and criminal nature.

This jurisdiction may be either original or appellate; and exclusive, or concurrent, in some cases, with the State courts.

It is on the authority of this provision of the Constitution that the appellate jurisdiction of the Supreme Court of the United States is extended, by Act of Congress, to decisions of the State courts, in some cases, involving the construction of the Constitution, laws or treaties of the United States. See head "Supreme Court of the United States," further on in this chapter.

The federal judicial power extends to cases arising under the *national Constitution*, where there are no laws passed in pursuance of it, in order to give efficacy to those Constitutional pro-

visions which neither require nor admit of an Act of Congress to enforce them. The provisions of the federal Constitution which contain prohibitions or restraints on the individual States are of this nature.

It is only in "cases" made, that is, in suits or cases instituted according to the regular course of judicial proceedings, that such jurisdiction can be exercised. The courts of the United States, or the judges thereof individually, cannot be consulted upon, or decide, mere abstract questions, or any matter not coming before them in the course of the administration of justice.

In the cases embraced in this clause the jurisdiction of the federal courts depends upon the character or subject matter of the cause, and attaches, whosoever may be the parties. In some of the other classes of cases the jurisdiction depends entirely upon the character of the parties, and it is immaterial what may be the subject of controversy.

25. II. "To all cases affecting ambassadors, other public ministers and consuls."

The jurisdiction of the federal courts should be applied to these cases, because public ministers representing foreign nations, are entitled to be treated according to the law of nations, (*d*) and such cases may involve questions of national interest. See head "Ambassadors" and "Consuls," Part I, chapt. VIII.

The jurisdiction conferred by this provision of the Constitution on the federal judiciary, in relation to cases against foreign ambassadors and ministers, is only such as a court of law can exercise consistently with the law of nations.

In all these cases the Supreme Court of the United States has by the Constitution *original* jurisdiction; in relation to such cases *against* ambassadors and other public ministers it is made by Act of Congress *exclusive*, and in suits *brought by* them concurrent either with the inferior federal courts or with the State courts; it being, also, so concurrent in cases in which a consul or vice consul is a party.

The jurisdiction in these cases arises from the character of the parties, no matter what may be otherwise the nature of the complaint or demand.

26. III. "To all cases of admiralty and maritime jurisdiction."

The words admiralty and maritime are here synonymous. The cases included in this provision are such as relate to the high seas, whether crimes, captures, injuries or contracts. The high seas, including all places where the tide ebbs and flows, not being within any county or territorial district, constitute the grand highway of

(*d*) See as to the "Law of Nations," Part II. chapt. II.

nations; and hence the propriety of referring all questions having reference to this locality to the national judiciary. (e) Maritime causes generally depend upon the law of nations, and commonly affect aliens.

These cases relate to acts done on the high seas, and matters occurring or transacted there. They are civil or criminal. There are Acts of Congress providing for the punishment of offences committed on the high seas.

The jurisdiction of the federal courts in this class of cases is, from their nature, necessarily *exclusive* of the State courts.

The federal courts have also jurisdiction of cases arising under the Acts of Congress, made in pursuance of its power "to regulate commerce."

27. IV. "To controversies to which the United States shall be a party."

It is necessary that the United States should be allowed to sue in the federal courts; otherwise they would be compelled to sue in the State courts, and be subject to State jurisdiction.

This provision implies that the United States may sue; but it does not authorize that they shall be sued.

It is a principle of law that a nation or State cannot be sued, except by its own consent. The United States cannot be sued, there being no Act of Congress authorizing it.

This jurisdiction of the federal courts, as applicable to civil cases, is exercised concurrently with the State courts. The United States may bring civil suits against private persons in the State courts.

28. V. "To controversies between two or more States."

Jurisdiction is granted to the federal courts in these cases, in order to secure impartial justice; which might not be obtained in the courts of either of the States which are parties to the controversy. Such jurisdiction is, also, in harmony with the general system of the government of the Union, and is essential to its peace and stability.

The Supreme Court of the United States has original *exclusive* jurisdiction in this class of cases, by Act of Congress.

29. VI. "To controversies between a State and citizens of another State,"

Jurisdiction is given in such cases to the federal courts, in the fear that the State courts might not be impartial.

It had been decided that this provision authorized suits by *individuals against a State*, as well as by a State against individuals. And, hence, the eleventh Amendment to the federal Constitution was adopted, which provides "that the judicial power of the United States shall not be construed to extend to any suit, in law or equity,

(e) Walker's Introd. to American Law, p. 117.

commenced or prosecuted against one of the United States by citizens of another State, or by subjects of any foreign State."

No State can now be sued by an individual, unless it be in the courts of the State, and by its own consent.

By the Constitution of Delaware, it is provided, "Suits may be brought against the State, according to such regulations as shall be made by law."

"The Legislature shall direct by law in what manner suits shall be brought against the State." *Cons. of Wisconsin, Kentucky, Alabama, Missouri, Mississippi.*

It has been decided that where in a suit brought by a State against an individual, he takes out a Writ of Error against the State, this latter proceeding is not prohibited by the Amendment to the Constitution, as it is not an original suit against the State.

In suits of this class the Supreme Court of the United States has original jurisdiction, concurrently with the other federal courts and with the State courts; and appellate jurisdiction over those courts where they take cognizance of such suits; by Act of Congress.

30. VII. "To controversies between citizens of different States."

Cognizance of such cases is given to the federal courts, in order to avoid the influence of any bias that might exist in the courts of either of the States engaged in such a controversy, and to furnish tribunals common to all the citizens of the Union, for the free and equal administration of justice.

Jurisdiction in such cases is concurrent in the federal courts and the State courts.

Citizenship, in reference to this jurisdiction, means only residence; and if a citizen of one State removes with his family into another State, with a *bona fide* intention to reside there, he instantly becomes a citizen of that State, and may sue, as such, in the federal courts. (*f*)

A citizen of a territory, or of the District of Columbia, cannot sue a citizen of a State in these courts. (*g*)

A citizen of the United States, residing in any State of the Union, is a citizen of that State. (*h*)

31. VIII. "To controversies between citizens of the same State claiming lands under grants of different States."

Jurisdiction is given to the federal courts in these cases, because as the rights of the two States to grant the land are drawn in question, neither of them ought to decide the controversy.

(*f*) 3 Wash. C. C. 546. 4 Id. 101, 516, 609. 4 Dall. 360.

(*g*) 1 Whea. 91; 4 Wash. C. C. 519. See District of Columbia; Citizens of the United States.

(*h*) 6 Peters, 761.

This is the only instance in which the federal Constitution directly provides for the cognizance of suits between citizens of the same State in the courts of the United States.

32. IX. "To controversies between a State or the citizens thereof, and foreign States, citizens or subjects."

The reason for this provision is, that, as the general government is responsible for the conduct of its citizens towards other nations, all questions touching the justice due to foreign States and people should be determined by the national authority.

There would, also, be thus secured to foreign States or citizens a greater impartiality in the decision of such cases, than there might be in the courts of a State, with which, or its citizens, the controversy should be depending.

A State may sue, but cannot be sued without its consent, in any such case. The original jurisdiction in such cases is concurrent in the Circuit Courts of the United States and the State courts; the federal Supreme Court having appellate jurisdiction.

An alien may sue either in the Circuit Court of the United States or a State court; and a citizen has the same election in bringing a suit against an alien; in any such case in a State court the defendant having a right to transfer it to the federal Circuit Court

Criminal jurisdiction.

33. The courts of the United States have jurisdiction of all crimes and offences committed in violation of the laws of Congress, made in pursuance of the federal Constitution.

This jurisdiction is necessarily *exclusive* in the federal courts; as in every indictment or prosecution for such offence it must be charged to have been committed against the United States, and as the President may reprieve or pardon for it. Every criminal prosecution must charge the offence to have been committed against the sovereign or government whose court sits in judgment upon the offender, and whose executive authority may pardon him.

The jurisdiction of the courts of the United States in regard to criminal matters is entirely distinct from that of the courts of the several States respectively. The jurisdiction which the State courts have, in some cases, concurrently with the federal courts, is confined to civil causes, for civil demands, or to enforce penal statutes.

The general government being formed for national purposes, it can have power to punish only crimes and offences which affect the whole country; whilst the several States have cognizance generally of all offences, of a local and municipal character.

34. Offences against the United States are such as Congress has either *express* or *incidental* power to punish, by the Constitution. (*h*)

There are five classes of offences declared by Congress, in pursuance of its *express* power to punish. I. Treason, against the United States. II. Offences committed on the high seas; as piracy, murder, manslaughter, mayhem, larceny, and other felonies; being concerned in the foreign slave trade; and certain offences against ships and vessels. III. "Counterfeiting the securities and current coin of the United States." IV. Offences against the law of nations; as violating any safe-conduct, or passport, issued under the authority of the United States; and the infringement of the rights of foreign ambassadors. V. Offences committed in places wherein Congress has the power of exclusive legislation; as in the District of Columbia, the territories of the United States, and in places purchased by the general government for the erection of forts, arsenals, dock-yards, and the like. There is a number of offences declared by Act of Congress, in pursuance of its incidental power; as offences against the revenue laws, against the laws regulating commerce with the Indians, against the post-office regulations, extortion and embezzlement by officers of the United States, and the like.

Civil jurisdiction.

35. The courts of the United States have jurisdiction of all civil cases arising under the federal Constitution, or the laws of the United States made in pursuance of it.

The distinction between the jurisdiction of the federal courts and that of the State courts depends upon, and corresponds with the difference between the general government and the several State governments, as to their nature and powers, under the common system. The power of the general government as to the jurisdiction of the federal courts can only be such as is expressly or impliedly granted by the Constitution of the United States, in regard to national objects, and the State governments may confer upon their courts respectively all jurisdiction not thus authorized, nor inconsistent with any provision of the federal Constitution. There are within each State federal and State courts having separate jurisdiction respectively, according to this jurisdiction.

Jurisdiction exclusive, or concurrent with the State courts.

36. The federal and State courts have, in some cases, concurrent jurisdiction

(*h*) See as to "Power of Congress to punish offences," Part I. ch. III.

The cases of such concurrent jurisdiction are stated under the heads of the particular federal courts respectively, in this chapter. See also the head, the "Jurisdiction of the State courts and magistrates under Acts of Congress."

The jurisdiction of the national judiciary, as declared in the federal Constitution, is in part necessarily *exclusive*, from the nature of some of the cases to which it extends; and in part either exclusive, or concurrent with the State courts, in regard to other cases enumerated in the Constitution, as may be provided by Act of Congress.

Its jurisdiction in criminal and admiralty cases is necessarily exclusive, from the nature of the cases. In all other cases its jurisdiction is either exclusive, or concurrent with that of the State courts, as is directed by Act of Congress.

In all the cases to which the judicial power of the United States extends, Congress may vest exclusive jurisdiction in the national courts. It has done so in some cases.

It is held by some jurists that all the jurisdiction contemplated by the federal Constitution must be vested in courts constituted by Congress; and no portion of it can be conferred by Congress upon the State courts. (i)

The jurisdiction which a State court can exercise concurrently with the federal courts, can only be in those cases of which it has jurisdiction under the laws of the State on general principles, and when such jurisdiction is not taken away by the federal Constitution. Such jurisdiction cannot be derived simply by any Act of Congress, because the federal Constitution does not authorize Congress to confer it.

It has been held, that it is only in those cases, where the State courts, previously to the federal Constitution, possessed jurisdiction, independently of national authority, and it was not taken away by the Constitution, that they can exercise jurisdiction concurrently with the federal courts.

Where the State courts have jurisdiction concurrently with the courts of the United States, in the cases enumerated in the federal Constitution, there may be an appeal from the State courts to the national judiciary. See, further on, the head "Supreme Court of the United States," in this chapter.

37. What power have the courts of the United States to issue judicial writs?

All the courts of the United States have power to issue all judicial writs, though not specially provided by Act of Congress, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law.

(i) See Part II. chapt. VI. See par. 191, in this chapter.

The individual judges of the federal courts have power to issue writs of *Habeas corpus*, and afford relief thereon from all manner of unjust imprisonment occurring under, or by color of, the authority of the United States.

The common law.

38. How is the common law regarded in the courts of the United States?

There is not under the federal government any common law, considered as a source of jurisdiction; but where jurisdiction is given by the Constitution and laws of the United States, the common law, under their correction, is deemed a proper guide, and the means of exercising the jurisdiction, in all cases, civil and criminal, not specially provided for by Act of Congress.*

Trial by jury.

39. What is the provision of the Constitution of the United States as to trial by jury?

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the course of the common law.” *Cons. of U. S. Amendments, Art. VII.*†

“The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as Congress may by law have directed.” *Cons. of U. S. Art. III, Sect. II. 3.*†

“No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of a grand jury; except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger.” *Cons. of U. S. Amendments, Art. V.*†

Rights of accused persons.

40. There are certain rights and privileges secured by the federal Constitution to persons accused of crimes and misdemeanors; in regard to process of law for their arrest, the bailing of prisoners, the mode of trial, and the degree of punishment. The provisions of the Constitution on these subjects are treated of in chapter VII, Part I, of this work.

* See Part II. chapt. II. par. 11-12.

† See Part I. chapt. VII.

COURTS OF THE UNITED STATES.

41. What is the provision of the federal Constitution as to the organization of the courts of the United States?

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time establish. The judges both of the Supreme and inferior courts shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." *Cons. of U. S. Art. III, Sect. I.*

It is imperative upon Congress, under the provisions of the federal Constitution, to provide for the establishment of a Supreme and inferior courts of the United States.

42. The judicial power of the United States, or any part of it, can only be vested in "courts" established by Congress; such courts to be composed of "judges" to be appointed with such tenure of office, with reference to such "compensation at stated times," liability to impeachment, and in such manner, as it is provided in the federal Constitution.

Such judges, it seems, can be only nominated, and by and with the advice and consent of the Senate, appointed by the President of the United States, in pursuance of Art. II, Sect. II, 2, of the federal Constitution.

Such judges, it seems, are not "such inferior officers," in the sense meant in the last clause of the paragraph of the Constitution just mentioned, whose appointment may be vested, by Congress, "in the President alone, in the courts of law, or in the heads of departments."

43. What courts of the United States are there, established by Acts of Congress, in pursuance of the Constitution?

The Supreme Court of the United States, Circuit Courts, and District Courts, in general.

There are, then, three grades of federal courts; but for these courts there are only two grades of judges, namely *Supreme* and *District* judges. The Supreme judges are the Chief Justice of the United States, and his associates, as judges of the Supreme Court; and the District Judges are those who hold the District Courts of the United States; the Circuit Courts being held each by a single Supreme judge assigned to the particular circuit, and the District judge.

There are, in general, no other judges of the national government than those of the courts above mentioned; and no other judicial magistrates or justices of the peace. By a late Act of Congress a Court of Claims was established. In the District of Columbia

there is a Circuit Court for the District, consisting of three judges appointed by the President, and there are justices of the peace, appointed in like manner, under the Acts of Congress, also, a judge of the Criminal Court, and a judge of the Orphans Court.

44. The distribution of the judicial authority of the Union amongst the several courts of judicature is in the power of Congress to be made at its discretion, except as to the original jurisdiction of the Supreme Court in the few cases specified in the Constitution.

The whole judicial power of the Union ought, in all cases at least in which it is exclusive of the States, to be vested and distributed amongst national courts. (*j*)

The jurisdiction of the courts of the United States, in regard to all the cases enumerated in the Constitution, may be extended to them by Congress, when not restricted by the Constitution, in any form in which the judicial power may be exercised; either in the shape of original or appellate jurisdiction, or both; and as exclusive or concurrent.

In all cases where the judicial power of the United States is to be exercised, it is for Congress alone to prescribe the rules of proceeding, to direct the kind of process, and to declare its nature and effect, and the mode in which the judgments of the courts shall be executed.

45. The Senate of the United States, when trying an impeachment, acts as a court of justice, and is denominated a "Court for the trial of impeachments;" but though thus vested with high and peculiar judicial powers, it becomes specially organized for their exercise on extraordinary occasions, and does not belong to the number of the ordinary and permanent courts, and has not been so classed by the Constitution.

Judges.

46. The judges of the courts of the United States are appointed by the President, by and with the advice and consent of the Senate.

The President shall "nominate, and, by and with the advice and consent of the Senate, appoint judges of the Supreme Court, and all other officers of the United States whose appointment is not herein otherwise provided for, and which shall be established by law." *Cons. of U. S. Art. II, Sect. II, 2.*

See, above, in this chapter, par. 42.

Tenure of office.

47. "The judges both of the Supreme and inferior courts shall hold their offices during *good* behaviour." *Cons. of U. S. Art. III, Sect. I.*

(*j*) See par. 101, in this chapter.

The judges hold their offices for life, unless removed by impeachment.

48. This is what is called their tenure of office. It is designed thereby to secure their independence and impartiality in the discharge of their duties.

Compensation of the judges.

49. "The judges both of the Supreme and inferior courts shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." *Cons. of U. S. Art. III, Sect. I.*

This provision of the federal Constitution, in regard to the compensation of the judges of the United States, is intended further to secure their independence and integrity in the administration of justice.

By these provisions in relation to their tenure of office and compensation, the judges are rendered thus independent in regard to the other departments of the government, the parties concerned in the cases before them, and the people.

50. "The salaries of judicial officers may, from time to time, be altered, as occasion shall require, yet so as never to lessen the allowance with which any particular judge comes into office in respect to him." *Federalist.—Story on the Constitution.*

Where there has been an addition made to a judge's salary, after he came into office, that addition may, in respect to him, be lessened or taken away by Act of Congress.

51. By Act of Congress, the Chief Justice of the United States receives as his salary five thousand dollars per annum; the Associate Judges of the Supreme Court each four thousand five hundred dollars per annum; and the District judges each from one to three thousand dollars per annum, according to their locations respectively.

Impeachment of the judges.

52. Are the judges of the United States liable to impeachment?

"The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." *Cons. of U. S. Art. II, Sect. IV.* See the head "Impeachments," Part I, chap. 3.

The Judges are thus made amenable for any corrupt violation of their trust or official misdemeanor; and, on impeachment and conviction, they may be removed from office, and disqualified for the future from holding any office whatever under the government of the United States.

Supreme Court of the United States.

53. How is the Supreme Court of the United States organized?

It consists of nine judges; the Chief Justice of the United States and Associate Judges.

It is created by the federal Constitution; but its organization is under Acts of Congress.

The federal Constitution merely declares that there shall be a Supreme Court of the United States, with certain original and appellate jurisdiction; and it is to be implied from that instrument that the Chief Justice of the United States shall preside in it, with an indefinite number of judges to be associated with him. But by several Acts of Congress it is provided that the Court shall consist of the Chief Justice and eight Associate Judges; any five of whom shall constitute a quorum.

54. It holds but one session annually, commencing on the first Monday of January, at the seat of the general government. The time and places of its session may be determined by Congress.

55. What is its jurisdiction as to extent of territory?

It extends over the whole United States, including the territories thereof and the District of Columbia.

56. Its jurisdiction as to the subject matter thereof, applies, in general, to all the cases enumerated in the federal Constitution, as those to which "the judicial power shall extend."

57. Its jurisdiction, as to the manner of exercising it, is both original and appellate, as determined by the Constitution and Acts of Congress.

58. Congress can neither invest the Supreme Court of the United States with *original* jurisdiction in those cases in which the federal Constitution provides that it shall be appellate, nor invest it with *appellate* jurisdiction in those cases in which the Constitution declares that it shall be original.

59. In what cases has the Supreme Court of the United States original jurisdiction?

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction." *Cons. of U. S. Art. III, Sect. II, 2.*

60. The original jurisdiction of the Supreme Court of the United States comprehends these cases only; and Congress cannot extend it further. It has been so decided on the principle that the affirmation of a power in specified cases excludes it in all cases not specified.

In these specified cases original jurisdiction is not to be *confined* absolutely to the Supreme Court of the United States, but may be vested, concurrently with it, in the inferior federal courts, by Acts of Congress.

61. The Supreme Court of the United States has, by Act of Congress, *exclusive* original jurisdiction in all of the cases above specified; except in suits by a State against one or more of its citizens, or against citizens of other States, or aliens; and except, also, in suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. (*k*)

In such suits, as those last mentioned and excepted, its jurisdiction is *concurrent*, either with the other national courts, or with the courts of the several States. It is so provided by Act of Congress.

62. What *appellate* jurisdiction has this court?

"In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress may determine." *Cons of U. S. Art. III, Sect. II, 2.*

63. It revises, by writ of error or appeal, all final judgments and decrees, in civil actions, of the Circuit Courts of the United States, where the value in controversy exceeds two thousand dollars. It has no appellate jurisdiction in criminal cases; but in all cases, civil and criminal, where the judges of a Circuit Court of the United States differ in opinion, so as to prevent a decision therein, the point of disagreement shall be certified up to it for determination.

64. Final judgments and decrees of the Circuit Courts of the United States, in cases of admiralty and maritime jurisdiction, and in prize cases, where the matter in dispute exceeds two thousand dollars, may be reviewed on appeal in the Supreme Court of the United States.

65. The exercise of appellate jurisdiction is not limited by the federal Constitution to the Supreme Court of the United States. Congress may create inferior courts of the United States, in each of which it may vest appellate as well as original jurisdiction.

66. In all cases where a concurrent original jurisdiction is vested by the Constitution in the Supreme Court, it has an appellate power over the decisions of those courts, upon which Congress may confer, in the same cases, concurrent jurisdiction, whether original or appellate.

67. Has the Supreme Court of the United States appellate jurisdiction in any actions brought in the State courts?

By the Judiciary Act of Congress, the final judgments and decrees of the highest court of law or equity in any State, may be revised by the Supreme Court of the United States on *writ of error*, in the following classes of cases, viz :

(*k*) 1 Kent's Commentaries, p. 298.

Where the validity of a treaty, Act of Congress, or of any authority exercised under the United States, shall be drawn in question, and the decision shall be against it.

Where the validity, of a State Constitution, law or authority, shall be drawn in question on the ground of repugnancy to the federal Constitution, treaties or laws, and the decision shall be in its favor.

Where the construction of the federal Constitution, or of a treaty, or statute of the United States, or commission held under the same, shall be drawn in question, and the decision shall be against the right or title claimed under the authority thereof.

69. In case of a reversal by the Supreme Court of a judgment of the highest State court, the cause is generally *remanded* to that court, with a mandate or command to the State court to conform its judgment to that of the Supreme Court; or the Supreme Court of the United States may, if the cause has once before been remanded, proceed to a final disposition of it, and award execution accordingly.

70. As the Constitution provides that the federal power of the Union shall extend to all cases arising under the Constitution, laws and treaties of the United States, &c., the appellate power of the federal courts must be extended to the State courts where the latter exercise concurrent jurisdiction in any of these cases. And this must be the case, also, when the State courts incidentally take cognizance of questions under the Constitution, laws, and treaties of the United States, of which the federal courts have exclusive jurisdiction.

71. As the appellate jurisdiction of the Supreme Court of the United States may be extended to all the cases comprized within the judicial power of the general government, it may be applied to the State courts where they entertain jurisdiction over any of these cases.

This appellate jurisdiction of the federal courts extends to the State courts in such cases, whether they be criminal prosecutions, or those of a civil controversy.

72. This appellate jurisdiction of the Supreme Court of the United States is required, in order to decide effectively all cases of conflict between the several States, or of collision between the powers claimed by the United States and those claimed by a State. It is also necessary and proper, in order to maintain the supremacy of the Constitution, laws, and treaties of the United States over the Constitutions and laws of the several States, and to preserve uniformity of decision throughout the United States upon all subjects embraced by the federal Constitution.

73. The Supreme Court of the United States is the court of the last resort, in all cases within its jurisdiction; its judgments and decisions being final and conclusive.

Its decisions, made in the course of the administration of justice, are binding and conclusive upon the other departments of the general government; and upon the State governments, and their departments severally, and the people.

74. Its decision, so made, is thus binding and conclusive, not only as to the particular case before it, but as to the principles of the decision, which are to be held as precedents and authority, to bind future cases of the same nature. (*l*)

Its decisions, so made, and the principles thereof, are thus binding, on questions as to the construction of the Constitution of the United States.

75. The Supreme Court of the United States has power to issue *prohibitory* and *mandatory* writs, according to the principles and usages of law, to any courts, or persons holding office, under the United States.

76. The Supreme Court of the United States can, then, in the exercise of its jurisdiction, declare an Act of Congress, or a measure or proceeding of any department of the general government, to be unconstitutional and void. (*l*)

77. The Supreme Court of the United States can, then, in the exercise of its jurisdiction, declare a constitution, law, or proceeding, of a State, to be void, as contrary to the Constitution and laws of the United States. (*l*)

Circuit Courts of the United States.

78. How are the Circuit Courts of the United States organized?

The Circuit Courts are held, in general, each by one of the judges of the Supreme Court, and the judge of the District Court of the United States for the particular district.

79. How have judicial districts and circuits been established?

By Act of Congress, the United States have been divided into judicial districts, consisting of one State or more, in which a District Court of the United States is held by a district judge; and into circuits, formed of several districts, in each of which a Circuit Court is held by one of the judges of the Supreme Court and the District Judge.

The States of Florida, Texas, Iowa, Wisconsin and California have not been attached respectively to any circuits; but the District courts therein have the jurisdiction of Circuit Courts, and the District judges act as Circuit judges.

In the District of Columbia there is a local Circuit Court, for the District only, held by a Chief Justice and two associate judges thereof, specially appointed for the purpose. See, further on, in this chapter, the head, District of Columbia.

(*l*) See chapt. II, §10, and chapt. IX, § 5-8.

80. What is the jurisdiction of the Circuit Courts?

They have *original* jurisdiction, concurrent with the courts of the several States, of all civil suits, at law and equity, when the value in dispute exceeds five hundred dollars, and the United States are plaintiffs; or one party is an alien; or the suit is between a citizen of the State where it is brought and a citizen of another State; or against a citizen of the same State, claiming lands under a grant from another State. Suits, in such cases, commenced in the State courts, may, at the instance of the defendant, be removed into the Circuit Courts. They also have original jurisdiction of all suits involving copy rights and patents; and of all crimes punishable under the federal authority. The criminal jurisdiction is final unless there is a disagreement between the judges on a point of law, which is to be certified to the Supreme Court for decision.

The Circuit Court has *appellate* jurisdiction from the District Court by writ of error or appeal, in the following cases; first, in civil actions at law, where the value in dispute exceeds fifty dollars, by writ of error; and, secondly, in admiralty cases, where the value in dispute exceeds three hundred dollars, by appeal. It has no appellate jurisdiction in cases of equity, or in criminal cases. In the cases of appellate jurisdiction in the Circuit Court, if the judges differ, the opinion of the judge of the Supreme Court prevails, as the cases cannot be certified into the Supreme Court.

81. The Circuit Court of the United States in each circuit sits in four different capacities: 1st, as a court of common law; 2nd, as a court of equity or chancery; 3rd, as a maritime court, that is, a court trying matters relating to affairs on the high seas; 4th, as a court for the punishment of crimes against the laws of the United States.

82. It is the court of the highest power, in criminal cases, under the laws of the United States. It has power to try all offences punishable with death, under these laws; as murder, in forts, arsenals, and places ceded to the United States for national purposes, and on board of ships of war, in time of peace, and when not within the body of a county, or a harbor; and piracy. All crimes and offences prohibited by the laws of the United States are tried and punished in this court, except some of an inferior grade, which are tried in the District Court of the United States. In criminal cases it proceeds by a grand and petit jury.

83. An alien has his election to sue in the Circuit Court of the United States or in a State court. A citizen may sue an alien, or a citizen of another State, in either the Circuit Court or a State court. Such citizen or alien, a defendant in a suit commenced in a State court, may have it removed to the Circuit Court of the United States.

District Courts of the United States.

84. How are the District Courts of the United States organized?

They are held in the judicial districts respectively, by a district judge appointed for each district.

85. How have the judicial districts been established?

The United States have been divided, by Act of Congress, into districts, consisting of a State, or territory, or part thereof, for the purposes of the administration of justice and the execution of the laws.

86. The District Courts of the United States have jurisdiction of the following cases, viz : first, by *exclusive original* cognizance, of all civil cases, of admiralty and maritime jurisdiction ; secondly, of all seizures, penalties, and forfeitures, under the laws of the United States ; thirdly, concurrently with the Circuit Courts of the United States, and the State courts, of all injuries by tort in violation of the law of nations, or of a treaty of the United States, when an alien sues ; fourthly, concurrently with the Circuit Court of the United States and the State courts, of suits brought by the United States, when the value in dispute does not exceed one hundred dollars ; fifthly, exclusively of the State courts, of suits against Consuls, Vice Consuls, suits to repeal patents and concerning captures ; sixthly, of crimes and offences, cognizable under the authority of the United States, where the punishment does not exceed a fine of five hundred dollars, or imprisonment for six months.

87. This court has jurisdiction of suits and cases under the laws made for the collection of customs and duties ; also of suits on contracts for seamen's wages. In some cases it exercises its jurisdiction as a court of equity or chancery ; in cases at common law, it proceeds according to the course thereof, and by jury trial ; and in criminal cases by a grand and petit jury.

Courts in the Territories of the United States.

88. What courts are there in the territories of the United States?

There is a District Court of the United States in each organized territory, held by a District Judge, who is appointed by the President of the United States, by and with the advice and consent of the Senate of United States. There are also in these territorial governments courts established by their local laws, and judges and justices of the peace, appointed by their local authorities. See, above, Part, I, chapt. I, head Territorial Governments.

There is in each territory, in general, a Circuit Court consisting of a Chief Justice and two associate judges.

Courts in the District of Columbia.

89. There is a Court for the District of Columbia, established by Act of Congress, under the federal Constitution, called the Circuit Court of the District, consisting of a Chief Justice and two associate judges, appointed by the President of the United States; and there are, also, a District Court held by one judge, a judge of the Orphans Court, a register of wills, and justices of the peace, who are appointed in like manner.

It is provided by the laws of the United States, that the said Circuit Court shall have cognizance of all crimes and offences committed within the said district, and of all cases of law and equity between parties both or either of which shall be found resident within the said district; and also of all actions and suits of a civil nature at common law or equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and of all penalties and forfeitures made, arising or accruing under the laws of the United States; the judgments, orders and decrees of the Court being examinable, in the cases and manner provided, before the Supreme Court of the United States, by writ of error, or appeal. (o)

The power of Congress to legislate over the District, and the nature of the government thereof, have been made the subject of notice in another part of this work. (p)

Court of Claims.

90. In the year 1855 there was a court established by Act of Congress, to be called the Court of Claims, to consist of three judges, appointed by the President, with the advice and consent of the Senate, and to hold their offices during good behavior. It is vested with jurisdiction to hear and determine all claims against the United States founded upon any Act of Congress, regulation of an executive department, or any contract, express or implied, with the government of the United States, which claims may be suggested to the Court by a petition filed therein; and also all claims which may be referred to the Court by either House of Congress.

The Act provides that there shall be an officer called the Solicitor of the United States, to be appointed by the President, with the advice and consent of the Senate, to represent the government in such cases before the Court.

The Act directs that the Court shall report to Congress at the commencement of each session thereof, and at the beginning of each month during such session, the cases upon which the Court

(o) Act of Congress of Feb. 27, 1801.

(p) See "Congress of the United States," above, chap. III., and chap. I., head "District of Columbia."

has finally acted, stating the material facts in each case which it finds established by the evidence, with their opinion thereon, and the reasons therefor, and presenting, with the report, when the case has been determined in favor of the claim, a bill of Congress for carrying the decision into effect; the reports, together with the proposed bills, to be acted on by Congress in the usual manner.

If a case be determined by the Court adversely to the claim, and the decision be confirmed by Congress, it is made conclusive, except that, for sufficient reason, in the course of law, the Court may grant a new trial.

Officers of the federal courts.

91. The principal officers of the courts of the United States are attorneys and counsellors at law, solicitors and commissioners, clerks and marshals.

92. The attorneys and counsellors at law are persons learned in the law, admitted by the courts, according to their rules, to assist parties in their pleadings, and in the conduct of their causes. They are officers of the courts, entitled to certain privileges, and subject to be suspended from practice, and to other punishment, for misbehaviour in office.

Attorney General of the United States.

93. The Attorney General of the United States is appointed by the President of the United States, by and with the advice and consent of the Senate.

It is his duty, in general, to prosecute and conduct all suits in the Supreme Court of the United States in which the United States are concerned; and to give his advice and council on questions of law, when required by the President, or heads of departments.

District Attorneys of the United States.

94. They are attorneys at law for the United States, appointed by the President, by and with the consent of the Senate, one for each judicial district, to prosecute indictments and charges against all delinquents for crimes and offences cognizable under the authority of the United States, and to act for the United States in all civil suits in which they are concerned.

Commissioners.

95. By Acts of Congress the Circuit Courts of the United States are respectively authorized to appoint Commissioners, who are to hold their appointments at the will of the courts, with authority to take recognizances of bail, which may be justified before them; to take depositions of witnesses, and perform like services, in suits

and prosecutions before those courts, in pursuance of the rules and orders thereof, and their acts and proceedings being, for the most part, subject to the revision of the courts. By the Act of Congress of 1850, "for the recovery of fugitives from labor, &c.," very important powers and jurisdiction are conferred upon such a commissioner. The provisions of the Act are stated in that part of this work which relates to fugitives from labor. (*q*)

Marshals.

96. Marshals of the United States are appointed, one for each judicial district, by the President, by and with the advice and consent of the Senate, for the term of four years; removable at the pleasure of the President.

97. In general, their duties and powers are analogous to those of sheriffs in the several States. It is their duty to attend the District and Circuit Courts of the United States in their districts respectively, and to execute within their districts all writs, precepts, process, sentences and judgments of the courts of the United States. There are various special duties assigned them by law.

98. The marshals are generally assigned to take the census of the United States, as directed by Congress.

They may appoint deputies, at their pleasure, and remove them in like manner; being responsible for their official acts. They generally appoint a deputy for each county in their districts respectively. The deputy marshals are, also, by Act of Congress, removable at the pleasure of the Circuit or District Courts.

Gaols and prisons.

99. How may the marshals of the United States secure and confine persons arrested by them, or committed to their charge?

They are directed, by Act of Congress, to deliver their prisoners to the keepers of one of the gaols of the State, where the Legislature thereof has made it the duty of the gaoler to receive them; but otherwise the marshal may, under the direction of the district judge, provide his own place of custody.

In general, the United States have not court houses; but the federal courts are held in those of the States respectively: and there are no gaols or penitentiaries belonging to the Union, but the prisons of the States severally are used in the judicial proceedings of the federal courts for the confinement and punishment of prisoners and convicts, with the consent of the State legislatures respectively.

(*q*) See above, Chapter V, § 21.

Jurisdiction of State courts and magistrates under Acts of Congress.

101. The State courts and magistrates have been vested, by various Acts of Congress, with jurisdiction and powers in prosecutions, suits and proceedings under Acts of Congress.

102. They are not, however, obliged, nor can they be compelled, by the Acts of Congress, to exercise such jurisdiction or powers.

They may do so, when authorized by the laws of the State, but cannot be compelled by Act of Congress.

103. By Act of Congress, "for any crime or offence against the United States the offender may be arrested, imprisoned or bailed, (as the case may be) by any justice of the peace, or other State magistrate," for trial before the proper court of the United States; the bail, where the punishment may be death, to be admitted by a United States or State judge, as directed by the Act of Congress. (r)

(r) Act of Congress of 24th of September, 1789.

OUR GOVERNMENT

PART THE SECOND.

Of the Governments of the several States.

CHAPTER I.

OF THE GOVERNMENTS OF THE SEVERAL STATES.

1. These States are to be considered as having severally governments within themselves, and as standing, in respect to their governments and their people, in certain relations to the general government, and to every other State of the Union.

Each State has a government of its own, in the form and powers thereof consistent with the provisions of the federal Constitution.

2. The nature, in general, of the government of the Union, and of the governments of the several States, in respect to their mutual relations, is here to be kept in view.

The federal government is that of the people of the United States as a *nation*, for *national* purposes; and the several States have separate governments, for all other matters relating to them respectively. (*a*)

In our general republic, there are combined the system of the federal government and those of the governments of the several States, all fitted to operate harmoniously in their proper spheres, for a common end.

“In the compound republic of America, the powers surrendered by the people are first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and

(*a*) As to the relation between the general and State governments, and the powers of each, see Part the First, chap. I.

separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.”(b)

Each citizen, then, owes obedience both to the general government, and to the government of his State.

3. The form of government of each State is that of a representative democracy; each State being a republic. It is, in some cases, expressed in the Constitution of a State that there was thereby formed and established a free and independent republic, by the name specified.

The federal Constitution provides that each State shall have a republican form of government.

“The United States shall guarantee to every State in this Union a republican form of government.” *Cons. of U. S. Art. IV, Sect. IV.*

4. The general principle upon which the governments of the several States are founded is, that the supreme power is in the people; and that they have a right to establish a government, and make laws for themselves, as they see proper.(c)

5. The general principle as to the ends of all governments is, that government is instituted for the common good; for the safety and happiness of the whole community.(c)

6. The principle of representation, according to which the people exercise their supreme power by their representatives or delegates, is adopted and carried out in these governments. Their Constitutions were so formed, and their political and civil affairs are thus conducted.(d)

All power being derived from the people, all magistrates, officers of government, and persons vested with civil authority, are the substitutes and agents of the people, and at all times accountable to them.

7. As to the time when the several States became free and independent, those that originally formed the Union, having been colonies of Great Britain, became free and independent by their Declaration of Independence on the fourth day of July 1776: And the other States were admitted into the Union as such, under the federal Constitution.

8. Each State has a written Constitution of government. Its government was established by the people thereof, forming a written Constitution for their government.(f)

(b) The Federalist, No. 4.

(c) See the next following chapter.

(d) It is so in theory, and in general; any deviations from the principle, in constitutional structure, or in practical administration, this is not the place to notice, otherwise than as they are shown, in order, under the particular subsequent heads.

(f) See Part I, chapt. I, par. — p. 18.

9. The several States, and the people thereof, hold certain relations to the Union.

The people of the United States, as individuals, form the Union; and each State, in its collective capacity, is represented in the federal government and recognized and regarded as such, and its agency employed for many purposes, under the federal Constitution and laws.

In this view it is to be considered that the people of each State have parted with a portion of their supreme power to the Union, by the federal Constitution, for the benefit of the common government.

The powers which the people of the several States parted with to the Union, so that they cannot exercise them in the State governments, are all the "powers delegated to the United States" and vested in them exclusively, or that may be exercised by them exclusively; or "prohibited to the States severally;" by the federal Constitution.

10. All the "powers not delegated to the United States, nor prohibited to the States" severally, by the federal Constitution, are reserved to the people of the several States. They remain, as it regards the Union, as the original powers and rights of the people, to be exercised by them, at their discretion, in the formation of their State governments and in the enactment of their laws. (g)

The States, or the people thereof, do not derive their powers from the Constitution of the Union, but by their own inherent reserved right can act on all subjects which have not been delegated to the federal government, or prohibited to the States. The government of the United States can claim no powers which are not granted to it by the Constitution; and the powers, actually granted, must be such as are expressly given, or given by necessary implication. The powers retained by the States proceed from the people of the several States, and remain, after the adoption of the Constitution, what they were before, except so far as they may be abridged or restricted by that instrument.

The colonies by the dissolution of their connection with Great Britain became sovereign and independent States; the people thereof sovereign and independent; having exclusive supreme power of government; the States and the people thereof being considered either collectively or severally, or in both respects, as political communities. In the federal Constitution the people of the States, for the purposes therein declared, by their grant to the general government, by stipulation in reference to the States mutually, and by prohibition and restriction upon all the States,

(g) See Part I, chapt. III, par. 9, 75, and chapt. II, par. 9-10.

parted with and relinquished certain enumerated portions of that sovereignty and supremacy ; impliedly retaining all other portions thereof ; but expressly providing, for the sake of security, that all such other portions of power "are reserved to the States respectively, or to the people." (c.)

11. The people of any State cannot confer upon its government powers prohibited to the several States by the federal Constitution.

All acts of the people or government of any State, and laws passed by them, which are contrary to the provisions of the federal Constitution, or the laws of Congress in pursuance thereof, are unconstitutional and void.

The federal Constitution, and the laws of Congress passed in pursuance thereof, are the supreme laws of the land, and any law contrary thereto is unconstitutional and void.

12. A State cannot, either by a constitutional law, or by an Act of ordinary legislation, declare void a law of the United States, constitutionally passed, or suspend its operation within the territorial jurisdiction of the State. (h)

13. The people of the several States have, by the federal Constitution, entered into certain obligations and parted with particular rights to each other, in regard to their municipal laws and internal regulations respectively.

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." *Cons. of U. S. Art. IV, Sect. I.*

The citizens of each State are entitled to all privileges and immunities of citizens in the several States. *Cons. of U. S. Art. IV, Sect. II, 1.* Fugitives from justice, or from labor, escaping into other States, are to be delivered up. *Cons. of U. S. Art. IV, Sect. II, 2, 3.*

The States cannot enter into any treaty, alliance or confederation ; or into any agreement or compact with each other, without the consent of Congress ; or adopt commercial regulations with respect to each other. *Cons. of U. S. Art. I, Sect. X, 1, 2.* As to these subjects, see the proper heads, in Part the First, of this work.

12. What are the objects, in general, of the federal government and of the several State governments, respectively ?

The object of the federal government is to unite the people of all the United States into one nation, for national purposes ; and that of the several State governments, to regulate their local and municipal affairs.

(c) See note I, in the Appendix.

(h) See Part I, chap. VII, par. 9 75 ; and chap. II, par. 9-10.

"These States are constituent parts of the United States. They are members of one great empire, for some purposes sovereign, for some purposes subordinate."

"For all *national* purposes the States and the citizens thereof are one; united under the same authority and governed by the same laws. In *all other* respects the States are necessarily foreign to, and independent of each other."

"They form a confederate government; yet the several States retain their individual sovereignty, and with respect to their municipal regulations are to each other sovereign."

"The national and State systems are to be regarded as one whole. In America the powers of sovereignty are divided between the general government and those of the States. They are each sovereign with respect to the objects committed to it; and neither sovereign with respect to the objects committed to the other."(*i*)

"The powers of the States depend on their own Constitutions; the people of every State had the right to modify and restrain them according to their own views of policy or principle; and they remain unaltered and unimpaired, except so far as they were granted to the government of the United States, or prohibited and restricted, by the Constitution. This has been positively recognized by the tenth amendment to the federal Constitution."

"The powers retained by the States proceed not from the people of America, but from the people of the several States, and remain after the adoption of the Constitution what they were before, except so far as they may be abridged by that instrument." In our system the legislature of a State is supreme in the exercise of the powers conferred by its own Constitution; in all cases where its action is not restrained by the Constitution of the United States. (*j*)

"The jurisdiction of a State is co-extensive with its territory, and co-extensive with its legislative power; "and subject to the powers granted by the federal Constitution, it adheres to the territory as a portion of power not given away." The sovereignty of a State extends to every thing which exists by its own authority, or is introduced by its permission. (*k*)

15. No State can secede at its pleasure from the Union. No State nor any number of States less than three-fourths, can, by virtue of any right reserved in the federal Constitution, secede at

(*i*) 6 Wheaton's Rep. 414, 2 Peters' Rep. 590, 10 Peters' Rep. 579, 12 Wheat. Rep. 334. 6 Wheat. Rep. 419. 4 Wheat. Rep. 410. Baldwin's Cons. Views, p. 14.

(*j*) 1 Wheaton's Rep. 325. 4 Wheat. Rep. 193. 5 Wheat. Rep. 17, 54. 9 Wheat. Rep. 203, 9. 12 Wheat. Rep. 347. Baldwin's Cons. Views, 14.

(*k*) 3 Wheat. Rep. 387, 389; 6 Id. 429; 4 Peters' Rep. 564; Baldw. Cons. Views, p. 14.

pleasure from the Union. The federal Constitution may be amended by three-fourths of the States, as provided in it.(*l*)

16. The several States are, therefore, not to be considered as foreign to each other. They are parts of the same nation.

17. No State, then, is completely sovereign. A State is not so, in reference to the Union and the federal government. Each State is, however, sovereign and independent in the exercise of its powers consistently with the provisions of the Constitution of the United States.

18. Each State has formed a written Constitution of government, which is in accordance with the federal Constitution. There is much similarity between these Constitutions of the several States, in regard to the structure of their particular governments, and to the nature of their general provisions.†

19. A marked feature in the Constitutions of the States respectively is the separation of the legislative, executive and judicial departments of the governments, which characterizes so strongly the structure of our general government. They also resemble the federal Constitution, with respect to many important principles and provisions.

20. The provisions of the Constitution of each State may be classed under the following heads, namely; first, those which relate to the organization of the legislative department; secondly, those which relate to the organization of the executive department; thirdly, those which relate to the organization of the judicial department; fourthly, those which define and limit the powers delegated, and the powers reserved.

21. The government of each State is, then, one of limited powers.

Its powers are limited by the federal Constitution, and, as is generally the case, by the provisions of the Constitution of the State.

22. In a State Constitution, the power of government is granted in general terms; and it is limited by specific limitations or prohibitions. It is a rule of construction, therefore, as to the powers of the government of a State under its Constitution, that the grant of power is general, and the prohibition special; or that all powers are to be considered as conferred, which are not expressly or incidentally prohibited. This is the reverse of the theory of the federal Constitution.(*m*)

23. There are powers which may be exercised concurrently by the general government and the several State governments; which are, therefore, called concurrent powers.(*n*)

(*l*) See Part I, chap. I.

(*m*) See Part I, chap. II.

† See next following, chap, §3.

(*n*) See Part, I, chap. I.

24. The powers of government are generally distributed, in each State, among three departments, the *legislative department*, the *executive department*, and the *judiciary department*.

In some of the State Constitutions this division of the powers of government is formally and positively expressed.

“The powers of the government shall be divided into three distinct departments; the legislative, the executive and judicial.

“No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.” *Cons. of Tennessee, Maine, California.*

“The legislative, executive and judicial departments of government shall be distinct, and each department shall be confided to a separate body of magistracy; and no person or collection of persons, being of one these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” *Cons. of Georgia.* The Constitutions of Kentucky Indiana, Louisiana, Mississippi, are similar in this respect.

“In the government of this State, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from, and independent of, each other as the nature of a free government will admit, or as is consistent with that chain of connexion that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.” *Cons. of New Hampshire.*

25. It is the peculiar policy of our general and State governments, that the departments of government in each are distinct and independent of each other.

26. These departments are *co-ordinate* branches of government, with separate powers and duties, in the exercise of which they act independently of each other.

27. By the distribution of the powers of government among these departments, each is constituted, in its proper sphere, the immediate and co-equal representative of the people of the State, as the direct source of its authority, and the sole ultimate depository of the supreme power.

28. Any questions as to the powers of government and the constitutionality of laws are to be finally determined, in each State, by the judiciary thereof; there being an appeal from the court of the last resort of the State to the Supreme Court of the United States, in cases involving the construction of the federal Constitution or the laws or treaties of the United States.(o)

(o) Part I., ch. II; Part II., ch. VI.

Alteration or amendment of a State Constitution.

29. The people of each State have a right to alter its form of government and its Constitution. It is a principle implied in the nature of its political institutions, and expressly recognized by its Constitution.

“The United States shall guarantee to every State in this Union a republican form of government.” *Cons. of U. S. Art. IV Sect. 14.*

In most of the States, their Constitutions respectively contain provisions prescribing the mode in which they may be altered or amended. The methods thus provided for this purpose are various in the different States.

In general, a State Constitution provides that it may be altered and amended by the joint action of the Legislature and a convention of the people; the Legislature being authorized, whenever they may agree, by a majority, or two-thirds of all the members elected, at two successive sessions, on any specific alterations or amendments to be proposed, to submit them to the people, in such manner and at such time, as the Legislature shall prescribe, for their adoption or rejection.

“Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published, for three months previous to the time of making such choice; and if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments, to the people, in such manner, and at such time, as the Legislature shall prescribe; and if the people shall approve and ratify such amendment, or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of this Constitution.” *Cons. of New York, 1821.*

According to this method, the amendments are submitted either to the people for their votes directly thereon, or to conventions of delegates chosen by the people for the purpose.

In some States, it is constitutionally provided that the Legislature of the State may at any time pass a law for taking the sense of the people on the subject of calling a convention of the people to revise the Constitution.

In Alabama the Legislature, two-thirds of its members elected

agreeing thereto, may propose amendments to be voted upon directly by the people, and if agreed to by a majority of all the citizens of the State, and afterwards ratified by two-thirds of the Legislature, they shall be valid as parts of the Constitution of the State."

In Indiana, its Constitution provides that "every twelfth year, at the general election, the votes of the people shall be taken as to whether they are in favor of calling a convention or not; and if a majority of all the votes given shall be in favor of calling a convention, the Legislature shall provide by law for calling a convention, which shall have it in power to revise, amend or change the Constitution."

In some States, it is provided by their Constitutions that such amendments shall not be proposed, or conventions held, oftener than once within certain periods of time.

In New Hampshire, its Constitution provides that the sense of the people as to a revision of the Constitution, and calling a convention for that purpose, shall be taken, in the method prescribed, at the expiration of every seven years.

Where conventions are thus called, in pursuance of constitutional provisions; in some instances, they can act only on the particular amendments proposed by the Legislature; in other cases, they have in their power the subject of revision and amendment generally.

In the State of Vermont, there is a particular arrangement in its system of government, designed to prevent infractions of the Constitution, to adapt it to the emergencies of the times, and secure its permanence. The Constitution of the State provides that there shall be elected by the people every seven years a *council of censors*, composed of persons not connected with the legislative or executive departments of the government, to exercise their powers for one year, "whose duty it shall be to inquire, whether the Constitution has been preserved inviolate in every part during the last septenary, including the year of their service, and whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution. They are also to inquire, whether the public taxes have been justly laid and collected in all parts of the commonwealth; in what manner the public monies have been disposed of; and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the Legislature the repealing of such laws as shall appear to them to have been passed contrary to the principles of the Constitution. The said council

of censors shall also have power to call a convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this Constitution, which may be defective; explaining such as may be thought not clearly expressed; and of adding such as are necessary for the preservation of the rights and happiness of the people: but the articles to be amended, and the amendments to be proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject." *Cons. of Vermont, of 1793.*

In some States, their Constitutions respectively provide that amendments thereto may be finally adopted and made by the Legislature, being passed at two successive sessions thereof, with certain forms, and by majorities, in some instances of two-thirds, in others of three-fourths, of all the members elected to each House, the amendments having been published, after their passage at the first session, for a prescribed time before the second session. It is so in Maryland, Delaware, Missouri.

The Constitution of Virginia, recognizes in its Declaration of Rights "that a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish" the government, "in such manner as shall be judged most conducive to the public weal," but contains no provision in regard to the mode of amending it.

It is an admitted principle, that, independently of any constitutional declaration or provision, the people of a State, or a majority thereof, have a right to abolish, alter or amend its government and Constitution, by their clearly expressed will, made certain at any time or in any manner.

The subject of amendments to the Constitution of a State is also noticed, and, in some respects more particularly, in treating of the duties and powers of the State Legislatures. (*p*)

The original Constitutions of many of the States have been revised and amended. The amendments have, generally, been such as to place additional restrictions on those exercising the powers of government, to extend the right of suffrage, to increase the number of officers eligible directly by the people, and to operate in favor of popular rights.

(*p*) See, further on, chap. IV.

CHAPTER II.

OF THE MUNICIPAL LAW, IN GENERAL, OF THE SEVERAL STATES.

1. Municipal law is the rule by which particular nations, communities or districts, are governed. It is otherwise defined to be a rule of civil conduct prescribed by the supreme power in a State.

It is divided into written or unwritten law—or statute or common law.

2. The written law, as generally defined, is the express written will of the legislature, rendered authentic by certain prescribed forms and ceremonies. It is the written will of the people of the nation or State, as an authoritative rule of action, formally declared through its representatives.

The written law in this country consists of constitutions, treaties and statutes. The written law in a particular State includes the Constitution of the United States, the Constitution of the State, the Acts of Congress, and the Acts of the Legislature of the State.

3. A Constitution of a State or nation is the written declaration of the will of the people, defining the form and powers of government. (a) The federal Constitution is the declaration of the sovereign will of the people of the United States, uniting the people of the United States into one nation, for all national purposes; (a) and the Constitution of each of the States is the declaration of the sovereign will of a portion of the same people, uniting for municipal purposes, and constituting a State. (b)

“The true view to be taken of our State Constitutions is, that they are forms of government, ordained and established by the people in their original and sovereign capacity, to promote their own happiness, and permanently secure their rights, property, independence, and common welfare.

The language of nearly every one of the State Constitutions is, that the people do ordain and establish this Constitution; and where these terms are not expressly used, they are necessarily implied in the very substance of the frame of government. They may be deemed compacts, in the sense of their being founded on the voluntary consent or agreement of a majority of the qualified voters of

(a) See Part the First, chap. i. ii. &c. as to this definition, and the Constitution of the United States.

(b) See Part the Second, chap. i.

the State. But they are not treated as contracts and conventions between independent individuals and communities, having no common umpire. In general the import is, that the people ordain and establish, that is, in their sovereign capacity meet and declare, what shall be the fundamental LAW for the government of themselves and their posterity. The constitution of a State is, then, to be treated as a fundamental *law*, and not as a mere contract of government during the good pleasure of all the persons who were originally bound by it, or assented to it. A Constitution is, in fact, a fundamental law, or basis of government, and falls strictly within the definition of law.

A State Constitution is no further to be deemed a compact than that it is a matter of consent by the people, binding them to obedience to its requisitions; and its proper character is that of a fundamental law, prescribed by the will of the majority of the people of the State, (who are entitled to prescribe it,) for the government and regulation of the whole people." 1 *Story on the Cons.* p. 306—317.

4. A treaty is commonly defined to be a solemn written compact, entered into between two independent nations, to regulate their intercourse.

The power to make treaties is vested, in this country, in the President of the United States, with the concurrence of two-thirds of the Senate.(a) Treaties duly made are declared by the federal Constitution, to be "the supreme law of the land." They may, therefore, be called a part of the written law.

5. A statute is a law duly enacted by the Legislature of a State or nation. Acts of Congress and the laws passed by the State Legislatures respectively, are statutes.

6. Statutes are either *public* or *private*. A public statute is an universal rule or law that regards the whole community; private statutes operate upon particular persons or associations. Statutes are sometimes local, being limited in their operation to certain counties, townships, boroughs, or places in a State.

7. A statute begins to take effect from its date, at the time of its passage, and finally becoming a law, unless it is otherwise provided by the Constitution of the State, the statute itself, or by law.

When a bill passed by a State Legislature is approved and signed by the Governor of the State; or, being disapproved by him, is reconsidered and passed by the Legislature constitutionally; or, where an Act is passed by a State Legislature, the approval thereof by the governor not being necessary; such bill or Act becomes a law at the time of its being so approved and signed, or finally passed, respectively, which is its date, to take effect immediately,

(a) See Part I, chap, VIII. 32.

unless it be directed to the contrary, by the State Constitution, in the Act, or by law.

In some of the States, it is the law that Acts of Assembly, or statutes, shall not begin to take effect until a certain time after their passage, except where a particular Act provides differently.

“No law of a general nature shall, unless it be otherwise provided, be enforced until sixty days after the passage thereof.” *Cons. of Mississippi.*

“No Act of the General Assembly shall be in force until it shall have been published in print, unless in cases of emergency.” *Cons. of Indiana.*

“No general law shall be in force until published.” *Cons. of California.*

8. Where statutes, in a State, are repugnant to each other in their provisions, the rule is, that the latest statute prevails; and it is considered as repealing any prior statute so far as the provisions thereof are contrary to it.

9. It is a general principle of law, that when a statute which repealed another statute is itself repealed, that the other statute is thereby revived. In some States a different rule is established by a general statutory provision.

10. An Act of Congress, or a law of any of the States, may be adjudged to be unconstitutional and void.

An Act of Congress may be adjudged void, for being contrary to the federal Constitution; and a law of a State for being contrary to the federal Constitution, or to an Act of Congress in pursuance thereof, or to the State Constitution; by the proper courts of justice, in the due administration of the laws. (c) It is more proper to say that such an Act or law may, for the reasons mentioned, be treated as null and void, and therefore disregarded, by a court of justice, in deciding matters within its jurisdiction and properly before it.

11. What is *unwritten* or *common law*?

“The common law includes those principles, usages and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the legislature.” 1 *Kent's Commentaries on American Law*, p. 448, 470.

“Those parts of the law which, in England and here, are called unwritten, are so styled because their original institution and authority are not set down in writing, as Acts of Parliament or of the State legislature are; but they receive their binding force, and the power of laws, by long and immemorial usage, and universal reception: and the monuments and evidence of this common law

(c) As to the constitutionality of statutes, see Part the First, chap. i, ii, and chap. iii, head “Acts of Congress.”

are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the profession, handed down to us from the highest antiquity." 1 *Black. Comm.* p. 63, 1 *Pennsylvania Black.* p. 34.

"The common law, as far as it is applicable to our institutions and government, has been recognized and adopted as one entire system by the Constitutions of Massachusetts, New York, New Jersey and Maryland. It has been assumed by the courts of justice, or declared by statute, with the like modifications, as the law of the land, in every State. It was imported by our colonial ancestors, and was sanctioned by royal charter and colonial statutes. It is also the established doctrine that English statutes, passed before the emigration of our ancestors, and applicable to our situation, constitute a part of the common law of the country." 1 *Kent's Comm.* p. 472.

"We have not under our federal government any common law considered as a source of jurisdiction; while, on the other hand, the common law, considered merely as the means or instrument of exercising the jurisdiction conferred by the Constitution and laws of the Union, does exist, and forms a safe and beneficial system of national jurisprudence.

Though the judiciary of the United States cannot take cognizance of offences at common law, unless they have jurisdiction over the person or subject matter given them by the Constitution or laws made in pursuance of it; yet, when the jurisdiction is once granted, the common law, under the correction of the Constitution and statutes of the United States, would seem to be a necessary guide in all cases, civil and criminal, not specially provided for by statute." 1 *Kent's Comm.* p. 448.

In some of the States, as in Ohio, the courts have no common law jurisdiction of crimes; and they cannot treat an act as an offence, until the legislature has declared it to be such, and fixed the punishment therefor.

12. The common law was the basis of the civil institutions of the colonies; it was their scheme of jurisprudence, with only local exceptions suited to the condition of the colonists; and it continued to be so after the colonies became States. "At the adoption of the Constitution, there were no States in this Union, the basis of whose jurisprudence was not essentially that of the common law in its widest meaning; and probably no States were contemplated in which it would not exist." (a) It is recognized, in our federal jurisprudence, the Constitution of the United States and our judiciary Acts of Congress, referring to "cases in law and equity," "suits at common law," "the common law, and the principles and usages of the law," with other terms taken from the same source.

(a) See 3 Peters, 446, 8.

It was on the common law and constitutional law of England, that the people of the colonies and States justified their opposition to the government of that country, during the revolution; claiming the benefits thereof as their birthright and inheritance; as the security of their natural and civil rights, and of their political liberties. They asserted and maintained the rights and privileges of the Magna Charta of England, which embodied the common law, and made this their rallying point. And after the revolution, these principles were acknowledged and acted upon, as accordant with the genius of the people and the spirit of their institutions. The common law was declared by Act of Congress to be "the basis whereon these republics, their laws and constitutions, are erected;" and which Congress fixed and established as that of all laws, constitutions and governments, to be forever thereafter formed in the Territory North-West of the Ohio. (b)

It is from the common law, in its largest sense, have been taken, the grand right of representation, or that of the people to have a share in their government, by their representatives chosen by themselves; the policy of the distribution of the powers of government among several distinct departments; the independence of the judiciary, in the interpretation of constitutional law, and in the administration of justice in its ordinary course; the trial by jury; the remedy by writ of Habeas Corpus; and other maxims and rules of government and law, justly held to be so valuable and dear.

It has been urged by the ablest statesmen and jurists, that in recurring to the source of those great principles on which our general and State governments are founded, they may be traced to the system of the English common law and constitution of government, which attended our ancestors on their settling in this country.

It is an important consideration that these views look to practical results of great interest. It has been contended, that the common law, thus regarded, is the proper standard for the exposition of the federal Constitution; by which may be obtained a clear and settled understanding of its terms and provisions, on questions respecting its meaning; "by applying to it those established rules and maxims of the common law, in the construction of statutes, and those accepted definitions of words, terms and language, in which they had been used and received, as well known and understood, in their ordinary and legal sense, according to their subject matter." (c)

It is in the common law that we find the rules of interpretation

(b) Ordinance of 1787, for the government of the Territory North-West of Ohio.

(c) Baldwin's Cons. Views, p. 3.

of Acts of Assembly and of the laws of the United States; of public and private grants, charters, compacts, contracts; and to which we resort, as the standard by which to make our decisions in all cases, where it has not been altered by established usage or legislative power. (d)

13. *Equity*, in its technical sense, is that system of law by which justice is administered in a mode different from that at common law.

It means *chancery law*, or that system of rules by which courts of chancery are governed, in the administration of justice.

In a court of equity or chancery, there is no trial by jury; but the party complaining states his complaint in a bill of equity, and the party complained of makes his defense in a written answer. In such a court, the defendant may in any case, also, be required to make his answer, and disclose the facts, on his oath.

14. This system of equity has been adopted in our country.

In its principles, it has been adopted in most of the States; in respect to its forms of proceeding, in only some of them.

There are courts of chancery in many of the States; as in Virginia and New York, where the entire system of chancery proceedings has been adopted.

Within those States where there are no courts of chancery, equity is administered in various modes.

In some of those States the common law courts exercise chancery powers in their fullest extent; as in Ohio. In other States *equity* principles are part of the common law, and carried out in suits and proceedings at law; as in Pennsylvania. In Pennsylvania, however, it has been lately provided by Act of Assembly, that the courts may adopt the forms of chancery proceedings, in cases where a complete remedy cannot be otherwise afforded. The courts of the United States exercise chancery powers.

Law of nations.

15. The law of nations is that system of rules which reason, morality and custom have established among civilized nations;—that code of public instruction which defines the rights, and prescribes the duties of nations, in their intercourse with each other. 1 *Kent's Comm. on American Law*, p. 1.

The law of nations depends entirely upon the rules of natural law, or upon mutual compacts, leagues, treaties and agreements between independent communities; and in the construction of which compacts we have no rules to resort to but the law of nature; that being the only law to which these communities are equally subject. 1 *Black, Comm.* p. 43.

16. The law of nations is a part of the law of this country. The law of nations was part of the common law of England, which, so far as it may be consistent with the institutions of the country, and remains unaltered by statute, is an essential part of American jurisprudence. Its principles are recognized by the federal courts and embraced in the municipal law of the several States.

The law of nations is enforced, in some instances, by the sanctions of municipal law; and the offences which fall more immediately under its cognizance are, the violations of safe conduct, infringements of the rights of ambassadors, and piracy. To these may be added the slave trade, not indeed, as a piratical trade, absolutely unlawful by the law of nations, but as a trade condemned by the great principles of justice and humanity, openly professed and declared by the powers of Europe. 1 *Kent's Comm.* p. 1.

Power to punish offences against the law of nations has been expressly conferred on Congress by the federal Constitution; and Acts of Congress have been passed for that purpose, in reference to the above mentioned offences.

The law of nations always formed a part of the municipal law in Pennsylvania. 1 *Dallas' Reports*, p. 114, 120.

It is under this head, in the law, are generally considered, the privileges of ambassadors and consuls of foreign governments, and their exemption from arrest under the law of the country; also, the power of arresting persons for offences committed in another country, and the right of a government to demand of another government the surrender of criminals escaping into the territory of the latter.

DIVISIONS, AND DEFINITIONS, IN LAW.

17. The primary and principal objects of the law are *rights and wrongs*; or the establishment of rights, and the prohibition of wrongs.

18. Rights are divided into the *rights of persons*, being those which concern or are annexed to the persons of men; and the *rights of things*, being such as a man may acquire over external objects, or things unconnected with his person.

19. Wrongs are divided into *private wrongs* and *public wrongs*. *Private* wrongs being such as are an infringement of particular rights, concern individuals only, and are called *civil* injuries; and *public* wrongs are those, which, being a breach of general law, affect the whole community, and are, therefore, called crimes and misdemeanors.

20. Persons are divided into *natural* persons and *artificial* persons. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws

for the purposes of society and government, and are called corporations and bodies politic.

21. The rights of persons, considered in their natural capacities, are also of two sorts; absolute and relative. Absolute are such as appertain and belong to men merely as individual or single persons; relative such as are incident to them as members of society, and standing in various relations to each other.

22. The absolute rights of individuals may be reduced to three principal or primary articles; the right of personal security, the right of personal liberty, and the right of private property.

23. Persons may be considered, in respect to their civil relations, as public or private. Public persons are all those who occupy official relations; all others are private.

Corporations.

24. A corporation is a franchise, or civil right and privilege, possessed by one or more individuals, who subsist in a body politic, under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, as an individual.

25. Corporations are divided into *aggregate* and *sole*. A corporation *sole* consists of a single person, who is made a body corporate or politic, in order to give him some legal capacities and advantages, and especially that of perpetuity, which as a natural person he could not have. The corporations with us are generally *aggregate*, or the union of two or more persons in one body politic, with capacity of succession and perpetuity.

26. Corporations are further divided into *ecclesiastical* and *lay*. Ecclesiastical corporations are those of which the members are spiritual, and the object is also spiritual. With us, they are called *religious* corporations.

27. Lay corporations are divided into eleemosynary and civil. An eleemosynary corporation is a private charity, constituted for the perpetual distribution of the alms and bounty of the founder. In this class are ranked hospitals for the relief of poor, sick, and impotent persons, and colleges and academies established for the promotion of learning and piety, and endowed with property by public and private donations. Civil corporations are established for a variety of purposes.

28. Civil corporations are either *public* or *private*. Public corporations are such as are created by law for political purposes, as counties, cities, boroughs; they are vested with subordinate legislative powers, to be exercised for local purposes connected with the public good, and such powers are subject to the control of the legislature of the State. 2 *Kent's Comm. chap. XXXIII.*

Public corporations are those which are founded with public means, and for public purposes. Their criterion is, that no indi-

vidual has any interest in their foundation, except as a member of the general body politic. To this class belong all municipal corporations, beginning with the United States, and descending down through States, counties, townships, school districts, and the like. These are for the most part denominated *quasi corporations*, since with the exception of cities and boroughs, they require no special Act of incorporation.

Private corporations are those which are founded on private means ; their objects may be either public or private ; their criterion is a private foundation, whereby individuals have an interest in them distinct from that of the community. *Walker's American Law*, p. 207.

29. A bank created by the government for its own uses, where the stock is exclusively owned by the government, is a public corporation. So, a hospital created and endowed by the government for general purposes, is a public, not a private charity. But a bank, whose stock is owned by private persons, is a private corporation, though its operations partake of a public nature, and though the government may have become a partner in the association by sharing with the corporators in the stock. The same may be said of insurance, canal, bridge, turnpike, and rail road stock. 2 *Kent's Comm.* p. 275.

30. Some of the leading properties of a corporation are :

(1) That a corporation has *uninterrupted succession*, so long as its charter or the law incorporating it endures, independently of the death or a change of its members.

(2) All the acts which a corporation can do, are done in its *corporate name*, without any specification of its members.

(3) Corporations are authorized to have and use a *corporate seal*.

(4) Corporations are authorized to make *by-laws*, consistently with the provisions of its charter or Act of incorporation, and the laws of the land.

(5) The individual members of a corporation are not personally liable for its debts, beyond the amount of their shares in the capital stock ; unless they are expressly made so by the charter or Act of incorporation, or by law.

31. A corporation is generally created by an Act of the Legislature of the State.

A State legislature may create corporations, by virtue of the general powers vested in it, unless it is expressly prohibited by the Constitution of the State. In some States the power is expressly granted by the Constitutions thereof ; and in some instances, the power is limited or modified. (e)

32. Does Congress possess power to create corporations ? The

(e) See further on, chap. III, IV.

federal Constitution confers no express power on Congress to create corporations. It can only exist as an *incidental* power. It has been exercised as such in the incorporation of a national bank.

In some States the courts of justice are authorized to create corporations for certain purposes.

Persons, adults and infants.

33. When is a person of full age, capable of making contracts, and of acting for himself, in law?

Full age in males and females, is twenty-one years; which age is completed on the day preceding the anniversary of a person's birth, who until that time is an *infant*, and so styled in law. 1 *Black. Comm.* p. 463.

The age of twenty-one years is probably the period of absolute majority throughout the United States; though female infants, in some of the States, have enlarged capacity to act at the age of eighteen. In Vermont and Ohio females are deemed of age at the age of eighteen years. And Louisiana follows in this respect the common law period of limitation, though entire majority in the civil law, as to males as well as females, was not until the age of twenty-five. 2 *Kent's Comm.* p. 236.

Persons, males and females.

34. What are the capacities of females in law?

Females have no political capacity; that is, they have no direct voice or agency in the formation or administration of government. While they remain unmarried their legal capacities are the same as those of the other sex. When married they are placed under various disabilities.

Citizens and aliens.

35. How may private persons be divided?

Into *citizens* and *aliens*. Citizens are, generally, all free persons born within the United States, and all persons duly naturalized.

Aliens are persons born out of the jurisdiction of the United States, and being the citizens or subjects of another nation or government. (*f*)

36. In most of the several States, there is a distinction in respect to political privileges between free white persons and free colored persons of African blood; and in no part of the country, except in Maine and Massachusetts, do the latter, in point of fact, participate equally with the whites, in the exercise of civil and political rights.

(*f*) As to citizens and aliens, their rights and privileges, see Part the First, chap. i. p. 27, 28. and as to the naturalization of aliens, Part I. chap. iii. p. 57, 58.

The right of voting is confined to white freemen, in express terms, by the Constitutions of all the States, except New York, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Wisconsin; and by that of Georgia it is declared that the electors shall be citizens of the State. By the Constitutions of Michigan and Wisconsin it is provided that the right of suffrage may be allowed to civilized Indians, not belonging to any tribe.

“Negro and other slaves, born within and under the allegiance of the United States, are natural born subjects but not citizens. If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under such disabilities as the laws of the States respectively may deem it expedient to prescribe to free persons of color.” 2 *Kent's Comm.* p. 257, *in note*.

The right of *suffrage*, or voting at the general or other elections, varies in the different States. (*g*)

Slaves.

37. Domestic slavery having commenced at an early period, in this country, continued and increased throughout the States while they were colonies of Great Britain. It exists now in all the southern States of the Union; but it has become extinct in all the eastern States, and in New York and Pennsylvania, having been abolished therein by their Constitutions or laws. In the ordinance of Congress, of July 13, 1787, for the government of the territory of the United States north-west of the river Ohio, it was enacted, and declared to be an unalterable provision, that there should not be slavery, nor involuntary servitude, in the said territory, otherwise than in the punishment of crimes. This provision prevented the introduction of slavery into any of the States north of the river Ohio, and included in what was then called the North-Western Territory of the United States, to wit: Ohio, Michigan, Indiana, Illinois; and the Constitutions thereof prohibit it. It exists in Louisiana, Missouri, Florida, Texas, Alabama, Mississippi, Arkansas. It is prohibited by the Constitutions of the States of Iowa, Wisconsin and California. (*h*)

In the slaveholding States, “in the contemplation of their laws, slaves are considered, in some respects, as things or property, rather than as persons, and are vendible as personal estate. They cannot take property, by descent or purchase, and all they find, and all they hold, belongs to the master. They cannot make lawful contracts, and they are deprived of civil rights. They are assets in

(*g*) See as to the right of suffrage, further on, Part II, chap. iv, par. 58, and chap. vii. par. 7, 8.

(*h*) See the next following chapter.

the hands of executors for the payment of debts; and cannot be emancipated by will or otherwise, to the prejudice of creditors." 2 *Kent's Comm.* p. 253.

The laws that regard slaves as property, are local, and only apply so far as such laws can operate. Such local laws do not make them personal property generally. 18 *Pickens' Reports*, p. 216.

The state of slavery is a mere municipal regulation, depending upon the laws of the country or State under which it exists, and no nation or State is bound to recognize the state of slavery as to foreign slaves within its territory. It is so as between the States of this Union, except so far as the provisions of the federal Constitution extend. This principle was contained in the decision of the Supreme Court of the United States, made in 1838, in the case of *Prigg v. The Commonwealth of Pennsylvania*, reported in 16 *Peters' Reports*, p. 539.

The constitutional provisions in some of the States relative to slaves, are noted, under proper heads, in this part of the work. (i)

Division of time.

38. A year, in law, is a determinate period, consisting of three hundred and sixty-five days; the increasing day in leap year together with the preceding one, being accounted for one day only.

A year includes the space of time from a certain day in a particular month until the same day in the same month in the succeeding year; one of the days being included and the other excluded.

39. A month in law, in this country, means a *calendar* month. In some of the States it is so provided by statute.

40. As to a day, in law, in the space of a day all the twenty-four hours are generally reckoned; the law usually rejecting all fractions of a day in order to prevent disputes. Therefore, if I am bound to pay money on a certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. Fractions of a day are, however, regarded in some matters, as in recording deeds, and the like. Particular rules prevail, in law, as to negotiable or commercial paper.

Territorial divisions.

41. What are the general divisions of a State for civil purposes?

A State is generally divided into counties; each county into townships or towns, hundreds or parishes; and each township into districts or precincts. A county may contain a city; and townships include boroughs, towns and villages. In some States there are other territorial divisions, in relation to the militia, common schools, and other matters. (j)

(i) See the general Index, for Slave, &c.

(j) See further on, ch. VII.

CHAPTER III.

OF THE DECLARATION OF RIGHTS IN A STATE.

1. That part of the Constitution of a State in which are declared and contained certain general principles, prohibitions and provisions, in relation to the rights of the people and the powers of government, is called the Declaration or Bill of Rights.

2. These rights may be called, the *declared and peremptory rights of the people*. They are defined by the Constitution of the State.

There is a division of rights peculiar to us as citizens of a free and constitutional government; viz. *those which are defined by the Constitution*, and those which are not. The former may be designated as *imperative or peremptory*; since they are made the foundation of our social relations, and cannot be altered by delegated power. The people alone in their sovereign capacity can change them, by altering the Constitution. The latter may be called *discretionary*, since they depend upon the action of the Legislature.(a)

3. There exist such Declarations of Rights in the States generally. In some of the States they are not formally stated, but the principal provisions of them are embodied in the Constitutions.

4. Similar declarations of the rights of man have been made in most of the States, when they were colonies, and from the earliest periods of their history.

5. What was the great announcement of the fundamental rights of man in this country?

The Declaration of Independence of the North American States, July 4, 1776.

6. There is no such formal declaration of rights in the Constitution of the United States; but it contains many provisions, declaring these rights, and designed for their protection; particularly in the Amendments thereto.

7. In regard to the authority and force of the principles and provisions contained in the Bill of Rights of a State, or embraced in its Constitution, they are binding in all the departments of the government thereof, and on the people, in all cases, above other

(a) See Part I, chap. I, par. 37, and chap. VII, par. 2.

provisions of the Constitution, and above the law, common and statute, of the State.

It is generally declared in these Bills of Rights, "that all things contained therein are reserved and excepted out of the general powers of government, and shall forever remain inviolate;" and "that all laws contrary thereto are void."

8. The purposes and objects for which these Declarations of Rights were made, as stated in them, are, "that the general, great and essential principles of free government may be recognized and established."

9. These Declarations of Rights are worthy to be fully considered, and made familiar to the mind, for their evident truth, supreme authority, and important bearings; as they are, also, from the solemn circumstances under which our forefathers enunciated them, and the pure, noble and liberal sentiments which called them forth.

They announce clearly, freely and boldly, the great fundamental and unchangeable principles of human rights; they contain the soundest maxims on political government, derived from wisdom and experience; and they present the most just, safe and humane views of civil law and its administration.

Wise and righteous tenets, nobly avowed and maintained; happy will it be for our country that a consistent support and impartial application of them may long secure their proper benefits!

Bills of Rights, declaring and fixing certain principles of government for the protection of the rights of the people, have been used, at different times, in England. The first one was made there, and acceded to by the king, in the year 1225; being the celebrated *Magna Charta* of that country.

In some of the State Constitutions, the appreciation of these general rights is marked by the expression of gratitude to God for their possession, and the freedom enjoyed in establishing a free government.

"We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of his providence, an opportunity deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit and solemn compact with each other; and of forming a new constitution of civil government for ourselves and posterity; and devoutly imploring his direction in so interesting a design, do agree upon, ordain and establish the following Declaration of Rights, and frame of government, as the Constitution of the Commonwealth of Massachusetts." *Cons. of Massachusetts.*

"Grateful to God for the civil and religious liberty which he hath so long permitted us to enjoy, and looking to Him for his blessing upon our endeavours to secure and transmit the same, unimpaired, to succeeding generations, do ordain and establish this constitution of government." *Cons. of Rhode Island, Illinois.*

"Acknowledging with gratitude the good providence of God, in having permitted them to enjoy a free government," &c. *Cons. of Connecticut.*

"Grateful to God for our freedom." *Cons. of New York, Ohio, Wisconsin.*

"Through divine goodness all men have, by nature, the rights" — *Cons. of Delaware.*

"Grateful to Almighty God for our civil and religious liberty." *Cons. of Maryland.*

"Grateful to Almighty God for the free exercise of the right to choose our own form of government." *Cons. of Indiana.*

"Acknowledging with gratitude the grace and beneficence of God in permitting us to make a choice of our form of government." *Cons. of Texas.*

"Grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings." *Cons. of Iowa.*

Equality of rights.

10. The State constitutions, in general, contain provisions declaring the equality of the rights of all men.

Such are the provisions in the Constitutions of many of the States: "That all men are born equally free and independent, and have certain natural, inherent, and inalienable rights; among which are the enjoying and defending life and liberty, acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety."

"And that no men, or set of men, are entitled to exclusive emoluments and privileges, but in consideration of public services." See head, "Hereditary titles and privileges," further on, in this chapter.

In the Constitution of the State of Delaware it is declared; "Through divine goodness all men have, by nature, the rights of worshipping their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and, in general, of attaining objects suitable to their condition, without injury by one to another;" &c.

In some of the States the provision is, "That all men, when they form a social compact, are equal in rights." *Cons. of Connecticut. Texas.*

In the States of Kentucky, Mississippi, Alabama, the provision is; "That all free men, when they form a social compact, are equal in rights."

There is no such provision in the Constitutions of New York, Maryland, North Carolina, South Carolina, Georgia, Tennessee, Louisiana, Missouri.

It is meant by the declaration in these provisions that all men are born equally free and independent, as to essential rights, that all men are entitled to equal civil and political rights.

11. The same principle is contained in the Declaration of Independence of the United States.

“ We hold these truths to be self-evident ; that all men are created equal ; that they are endowed by their Creator with certain inalienable rights ; that among these are life, liberty and the pursuit of happiness ; and that to secure these rights, government was instituted among men, deriving their just powers from the consent of the governed.”

Origin and object of civil government.

12. The principle in relation to the source, authority and end of civil government, contained in these Bills of Rights, is, that all government, of right, originates from the people, is founded on their consent, and instituted for the general good.

13. It is declared in some of the State Bills of Rights ; “ that a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.”

Supreme power of the people.

14. It is the declared principle in the State constitutions, as to the supreme power of the people, that all power is inherent in the people ; that governments are founded on their authority ; and may be abolished, altered and reformed by them as they may think proper.

The principle is fully announced in the Declaration of Independence, by the States, in 1776.

“ That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

The State constitutions, in general, contain provisions directing in what manner they may be altered and amended. In the constitution of Virginia there is no such provision.

Internal government and police of a State.

15. The principle declared on this subject is, that the people of the State have the inherent, sole and exclusive right of regulating the internal government and police thereof.

“ The people of the State have the sole and exclusive right of governing themselves as a free, sovereign and independent State, and do, and forever shall, exercise and enjoy every power, jurisdiction and right appertaining thereto, which is not, or may not hereafter be, by them, expressly delegated to the United States of America in Congress assembled.” *Constitutions of New Hampshire and Massachusetts.*

Distribution of the powers of government.

16. In some of the States it is declared "that the legislative, executive and judicial departments of government ought to be forever separate and distinct from each other."

"In the government of the commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; and the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men." *Massachusetts*.

This subject is treated of in Part II, Chap. I.

Religious liberty and rights of conscience.

17. It is generally provided that no preference shall be given by law to any religious establishment or mode of worship; that all men have a right to worship God according to the dictates of their own consciences; and that no man can be compelled to attend or support any place of worship, or to maintain any ministry.

In some of the State Bills of Rights, the right of every individual to religious liberty, and to worship God according to the dictates of his conscience, is declared; "provided he doth not disturb the public peace, or disturb others in their religious worship." (b) In other States it is provided, "that this right shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State." (c)

In the Constitution of the State of Massachusetts, it is declared, in connection with similar provisions, "that it is the right as well as the duty, of all men in society publicly, and at stated times, to worship the Supreme Being, the great Creator and Preserver of the Universe." And in the Constitution of Vermont, "nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the will of God."

In some of the States it is thus provided, "that the civil rights, privileges or capacities of any citizen shall in no way be diminished on account of his religious opinions;" and "that no person on account of his religious opinions can be rendered ineligible to any office of trust or profit in the State."

In some of the States it is provided by their Constitutions, that no minister of the gospel or priest of any denomination, shall at any time hold any civil or military office in the State, or be a member of the Legislature thereof. *New York and Delaware*.

(b) Cons. of New Hampshire.

(c) Cons. of Connecticut.

It is generally provided, "that no subordination or preference of any one sect or denomination to another, shall ever be established by law," and "that no preference shall be given by law to any religious societies, denominations, or modes of worship."

In the States of Maine, Massachusetts and New Hampshire, it is provided in their Bills of Rights, "that all religious societies in the State, whether corporate or incorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance."

In Maryland the declaration is, "That it is the duty of every man to worship God in such manner as he thinks most pleasing to him : all persons professing the Christian religion are equally entitled to protection in their religious liberty," &c.

In Virginia it is thus declared, "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force and violence ; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience, and that it is the mutual duty of all to practise Christian forbearance, love and charity towards each other."

"No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever ; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief ; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever ; nor confer any peculiar privileges or advantages on any sect or denomination ; nor pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry ; but it shall be left free to every person to select his religious instructor, and make for his support such private contract as he shall please." *Virginia.*

In the Constitutions of Mississippi and California it is also declared, "the exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the State ; Provided, that the right hereby declared and established shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State."

In the State of Missouri it is provided in its Declaration of Rights, "That no religious corporation can ever be established in this State."

The provision in the Constitution of the United States as to religious liberty is, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Cons. of U. S., Amendments, Art. I.*

18. There are provisions in all these Bills of Rights recognizing and securing the rights of conscience.

The right of conscience is declared to be among the natural and inalienable rights of man.

"No person can be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship." *State of New York.*

In most of the States it is thus declared, "that no person who is conscientiously scrupulous about the lawfulness of bearing arms shall be compelled thereto, provided he pay an equivalent."

"The Legislature shall pass laws exempting citizens belonging to any sect or denomination of religion, the tenets of which are known to be opposed to the bearing of arms, from attending private and general musters." *Cons. of Tennessee.*

As to oaths.

19. In some of the State Bills of Rights there are provisions respecting the mode of taking an oath.

In such instances, in general, it is declared that the manner of administering an oath to any person shall be such as those of the religious profession or denomination, to which such person belong, generally esteem the most effectual confirmation by the Divine Being.

"The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God."

20. It is also generally provided that persons conscientiously scrupulous of taking an oath, shall be allowed to make their solemn affirmations, to be of the same avail as an oath.

See, further on in this chapter, the heads "Religious tests," "Freedom of speech, &c.," "Rights to bear arms," "Eligibility to office."

Such provisions are designed to meet the cases of persons who are conscientiously scrupulous of taking an oath in a particular form, or of swearing at all.

"No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief." *Cons. of California.*

As to religious tests.

21. It is generally provided in the State Constitutions, that no religious tests shall be required as a qualification to office.

In some of the States the constitutional provision is, that no person who acknowledges the being of God, and a future state of rewards and punishments, shall be disqualified on account of his religious sentiments to hold any office under the State.

In other States it is declared, "that no religious test shall ever be required as a qualification to any office or public trust under the State." See, also, the Cons. of the United States, Art. VI. 3.

Religious toleration.

"No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of the State." *Cons. of Tennessee, Mississippi.*

22. The effect of these provisions in the federal and State Constitutions is, that there is thus secured complete religious toleration in this country. It may be more properly called religious liberty.

Our forefathers emigrated from the tyrannical and oppressive governments of Europe, and settled in this country, for the sake, chiefly, of enjoying freedom of religion and the rights of conscience. They avowed these principles and acted upon them from the earliest period; maintained them amidst severe trials and adversity; and, on attaining independence, established them, in the general government and the States, as the fundamental supreme law.

Hereditary titles and privileges.

23. It is generally declared in the Bill of Rights, or Constitution of a State, "that the Legislature shall not grant any titles of nobility or hereditary descent."

"No hereditary titles, honors or emoluments, shall ever be conferred in this State." *Connecticut, North Carolina.*

"No office or place whatsoever, in government, shall be hereditary; the ability and integrity necessary in all not being transmissible to posterity or relations." *New Hampshire.*

24. There is a prohibition upon the States respectively, on this subject in the federal Constitution.

"No State shall;"—"grant any title of nobility." *Cons. of U. S. Art. I. Sec. X.*

The federal Constitution provides; "No title of nobility shall be granted by the United States; and no person, holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State." *Cons. of U. S. Art. I. Sec. X. 7.*

Gifts from foreign States.

25. In the Bill of Rights of the State of Maryland, it is de-

clared; "Nor ought any person in public trust to receive any present from any foreign prince or State, or from the United States, or any of them, without the approbation of this State."

Liberty of speech and the press.

26. In general, the provision on this subject in the State Bills of Rights is: That every citizen has a right to speak, write or print upon any subject, being liable for the abuse of that liberty. And that the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer; and that no law shall be passed to restrain the right thereof.

"The liberty of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained." *North Carolina.*

"The liberty of the press is essential to the security of freedom in a State, and ought to be inviolably preserved." *New Hampshire.*

"Congress shall make no law abridging the freedom of speech, or of the press." *Cons. of U. S. Amendments, Art. I.*

Law of libels.

27. There are generally contained in these Bills of Rights certain provisions as to prosecutions for *libels*. For the most part, they provide that in prosecutions for any publication respecting the official conduct of public officers, or where the matter is proper for public information, the truth may be given in evidence.

In the State of Missouri the provision is; "In all prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous is true, and was published for good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the facts."

The common law doctrine, on this point, in relation to libels, is, that on indictments for libels, which are written or printed abuse, the truth cannot be given in evidence.

Libels on individuals are defined to be malicious defamations, expressed either in writing, or by printed signs and pictures; tending to blacken the memory of one that is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt and ridicule.

The criminality of such libels is held, in law, to consist in their tendency to disturb the public peace, which is the same whether the libel be true or false; and therefore, at common law, the truth of the matter contained in an alleged libel cannot be given in evidence on an indictment for it, in justification or defence of it.

28. As to the powers of jurors on indictments for libels, it is generally declared, that in all indictments for libels, the jury shall have the right to determine the law and facts, under the direction of the court, as in other cases.

Equal representation.

“Representation shall be apportioned according to population.”
Cons. of California.

Right of the people to assemble.

29. It is generally contained in the Declaration of Rights of a State, as follows :

“The people shall have the right peaceably to assemble ;” or, “That the people have a right, in an orderly and peaceable manner, to assemble together for their common good ; to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or for other purposes, by address or remonstrance.” *Tennessee, Mississippi, &c.*

In the federal Constitution it is declared, “Congress shall make no law”—“abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”
Cons. of U. S., Amendments, Art. I.

“The citizens have a right, in an orderly manner, to meet together, and apply to persons intrusted with the powers of government for redress of grievances and other proper purposes, by petition, remonstrance or address.” *Delaware, Connecticut, &c.*

Right of petition.

30. The right of petition is secured. It is generally provided in the Bill of Rights of a State, that the people have a right to apply to the Legislature, and those invested with the powers of government, for redress of grievances, and other purposes, by petition, address or remonstrance.

The right of the people to petition government for the redress of grievances is secured by the federal Constitution.

See the references under the next preceding head.

In some of the States the right of the people “to instruct their representatives,” is thus declared and secured.

This right of the people to petition government, for objects within its powers, besides being thus expressly secured, is clearly implied by the relation between those that govern and those that are governed, and especially by the nature of our republican institutions, the rulers here being the representatives of the people, and all government being established for their common benefit.

The people having a right to petition ; there is an obligation on the government to receive and consider their petitions.

The reason for thus solemnly asserting these principles, so self-evident, in regard to the right of the people to assemble and petition government, probably was, that in England important restrictions were laid upon the exercise of these rights.

Security of property from public use.

31. These Bills of Rights provide for the security of private property from public use.

Generally, the provision is, that private property shall not be taken for public use without just compensation.

In some States it is added to such a provision, "nor unless the public exigencies require it."

"Private property ought to be subservient to public uses, when necessity requires it; nevertheless, when any person's property is taken for the use of the public, the owner ought to receive an equivalent in money." *Cons. of Vermont.*

"No man's particular services shall be demanded, nor property taken or applied to public use, without the consent of his representatives, or without a just compensation made therefor." *Cons. of Indiana.*

32. In the federal Constitution it is provided, "Nor shall private property be taken for public use, without just compensation." *Cons. of U. S. Amend. Art. V.* The provision only applies to the United States.

It is necessary to carry on the operations of government, that private property should be liable to be used for public purposes, compensation being made therefor; otherwise it might be in the power of individuals to prevent the most important public improvements in the country. Private property is then taken under authority of law, for the construction of public roads, canals, bridges, or the like.

33. The right of eminent domain, or inherent sovereign power, gives to the Legislature of a State the control of private property for the use of the public, provided just compensation be made therefor. It is a general principle, which may, however, be denied, limited or modified in its application by the Constitution.

34. It has been held by the courts of one of the States, that the provision in its Constitution, of the kind above stated, is merely declaratory of the common law; the principle having existed before the Constitution, as applicable to all republican governments.

35. Under the constitutional provisions, on this subject, Congress, or the Legislature of any State, cannot take the property of an individual, or divest him of a right of property, in order to give it to another.

See the head, Administration of justice, further on, in this chapter.

Security of contracts.

36. It is generally declared in the several States :

“That no law impairing the obligation of contracts shall be passed.”

The several States are prohibited by the federal Constitution to pass such laws.

“No State shall”—“pass any law impairing the obligation of contracts.” *Cons. of U. S. Art. I. Sect. X. 1.*

The construction of these constitutional provisions has been considered in a former part of this work. (*d*)

Ex-post facto laws.

37. The Constitution of every State provides, that the Legislature thereof shall pass no *ex-post facto* laws.

In some of the States, the provision is expressed thus ; “That retrospective laws, punishing facts before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty ; wherefore, no *ex-post facto* law ought to be made.”

In some of the States it is declared, in their Bills of Rights, “that no retrospective laws shall be made, either for the decision of civil causes, or the punishment of offences.” *Cons. of New Hampshire.*

See the head “Promulgation of laws,” further on in this chapter. The provision of the federal Constitution is ; “No *ex-post facto* law shall be passed.” *Cons. of U. S. Art. I. Sect. IX. 3.*

The meaning of these terms, and the construction of the clauses, have been the subject of notice, in the first part of this work. (*d*)

Bills of attainder, attainder. (e)

38. It is generally declared in these Bills of Rights as to bills of attainder :

“That no person shall be attainted of treason or felony by the Legislature.” “That the Legislature shall pass no bills of attainder.”

“No person ought, in any case, or at any time, to be declared guilty of treason or felony by the Legislature.” *Massachusetts.*

In regard to attainder, in any way, for crime, it is provided in the several States, in general ;

“That no conviction shall work corruption of blood or forfeiture of estate, except during the life of the offender.”

“No conviction for any offence shall work corruption of blood or forfeiture of estate.” *Mississippi.*

(*d*) See Part I, chap. V. (*d*) See Part I. chap. IV.

(*e*) See explanation of the terms and construction of the provisions. Part I. Chap. IV. p. 75.

“The estates of *suicides* shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.” *Alabama*.

See further on, in this chapter, the head “Administration of justice.”

Habeas corpus.

39. What is the provision generally contained in the State Constitutions, in relation to the writ of *Habeas corpus*?

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

There is a similar provision in the federal Constitution. *Cons. of U. S. Art. I. Sect. IV., 2.*

“That every freeman restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same if unlawful; and that such remedy ought not to be denied or delayed.” *North Carolina*.

The terms have been already explained, with some remarks on the subject. (f)

Warrants, searches and seizures.

40. It is generally declared on this subject, in the State Constitutions, “that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”

There is the same provision in the Constitution of the United States.

“No person shall be deprived of life, liberty, or property, without due process of law.” *Cons. of U. S. Amendments, Art. V.*

“No person shall be accused, arrested or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished but in virtue of a law established and promulgated prior to the offence, and legally applied.” *Alabama and Missouri*.

See “Administration of justice,” further on in this chapter.

In some of the States it is, also, thus declared; “And that general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed, or to seize any person or persons, not named, whose offences are not particularly described, and without oath or affirmation, are

(f) See Part I. Chap. IV.

dangerous to liberty, and shall not be granted." *Ohio, Illinois, Tennessee, North Carolina.*

Bailing of prisoners.

41. These Bills of Rights provide, as to the right of accused persons to be discharged from arrest and custody, on bail ;

"That all persons shall be bailable by sufficient sureties, except in capital cases, where the proof is evident, or the presumption great."

The provision as to excessive bail is ; "That excessive bail shall not be required."

There is a similar provision in the federal Constitution. *Cons. of U. S. Amendments, Art. VIII.*

See the head Habeas Corpus. Part I, chap. VI.

Indictments.

42. The State Constitutions generally provide ; "That no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, or in time of war, or public danger."

The federal Constitution contains a similar provision, applicable to cases in the Courts of the United States. *Cons. of U. S. Amendments, Art. V.*

In some of the States there is such a provision in relation to all criminal charges.

"No freeman shall be put to answer any criminal charge, but by indictment, presentment or impeachment." *North Carolina.*

In some of the States it is thus provided ; "that no person shall, for any indictable offence, be proceeded against criminally by *information*, except in cases arising in the land or naval forces, or in the militia, in the time of war or public danger ; or by leave of the court, for oppression or misdemeanor in office."

An *information* is a mode of proceeding at common law ; and is an accusation filed by the prosecuting officer, upon which the accused may be brought to trial without the introduction of a grand jury.

In some of the States it is entirely abrogated, as mentioned above, and in the others it is scarcely ever used.

Right of the accused in criminal cases.

43. It is generally contained in these Bills of Rights, as to the right of the accused in criminal cases, and their trial ; "that in all criminal cases the accused hath a right to be heard by himself and counsel ; to demand the nature and cause of the accusation against him ; to meet the witnesses face to face ; to have compul-

sory process to obtain witnesses in his favor; to have a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed."

In some of the States it is further added to such a provision "that the accused cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the laws of the land."

It is also generally thus provided, "that no person shall for the same offence be twice put in jeopardy of life or limb."

In the State of Iowa, the provision is; "that no person shall be tried after an acquittal for the same crime or offence."

The constitutional provision that no one shall be compelled to accuse or furnish evidence against himself, does not relate to questions of property, but to criminal cases only.

It is a principle in law, that after an acquittal by a jury on a criminal charge, a person cannot be again tried for the same offence; but that, nevertheless, when such an acquittal has been caused by a defect in the indictment, or when the jury in the case has been discharged by the court on account of their being unable to agree on a verdict, he may be tried again; on the ground that the first trial was no trial, and that he was not put in jeopardy by it. These principles hold, notwithstanding the above constitutional provisions.

In the State of Missouri it is an express constitutional provision, "that no person, after having been once acquitted by a jury, can for the same offence be again put in jeopardy of life or limb; but if in any criminal prosecution the jury be divided in opinion at the end of the term, the court before which the trial shall be had may, in its discretion, discharge the jury, and commit or bail the accused for trial at the next term of such court."

See head "Administration of Justice," further on in this chapter.

Confinement in jail.

44. Some of the State Bills of Rights contain provisions as to the treatment of prisoners in jail.

"No person arrested or confined in jail shall be treated with unnecessary rigor." *Ohio, Tennessee, &c.*

"And when persons are confined on accusation for capital offences, their friends and counsel may at proper seasons have access to them." *Delaware.*

Trial by jury.

45. In these Declarations of Rights the right of trial by jury is secured. The provision is generally; "that in all criminal prosecutions the accused hath a right to a speedy public trial by an impartial jury of the vicinage."

In some States the provision is, "that the trial by jury shall be as heretofore, and the right thereof remain inviolate;" in some States it being added, "but a trial by jury may be waived by the parties in all civil cases, in the manner to be prescribed by law."

By the vicinage is meant the vicinity, that is, the county or district, in which the alleged offence was committed.

In some States it thus provided, "that the usual number and unanimity of the jury, on indictments and convictions, shall be held indispensable." *New Hampshire.*

"In all criminal prosecutions the accused hath a right to a speedy public trial by an impartial jury of the county, without the unanimous consent of which jury he cannot be found guilty." *Vermont.*

It is generally thus provided, "that the accused cannot be deprived of his life, liberty or property, except by the judgment of his peers, or the law of the land."

"No freeman shall be imprisoned, disseized of his freehold, liberties, or privileges, or outlawed, exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." *Illinois, Tennessee, North Carolina.*

"No freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used," *North Carolina.*

"The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate." *Virginia, Kentucky,*

"That when an issue in fact, proper for the cognizance of a jury is presented in a court of law, the parties have a right to a trial by jury, which ought to be held sacred." *Vermont.*

In some of the States the provisions in their Bills of Rights are as follows, or similar thereto; "That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petty misdemeanors, which shall be punishable by fine not exceeding three dollars, in such manner as shall be prescribed by law, the right of trial by jury shall remain inviolate." *Indiana.*

The provisions of the federal Constitution as to the right of trial by jury are the following;

"In all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the State or district where the crime shall have been committed." *Cons. of U. S. Amendments, Art. VI.*

"In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved." *Cons. of U. S. Amendments, Art. VII.* This provision applies only to the United States courts.

See head "Administration of justice," further on in this chapter.

No commission of Oyer and Terminer.

46. It is generally provided in these Declarations of Rights ; “No commission of Oyer and Terminer or jail delivery shall be issued.”

Such were special commissions issued to persons other than the ordinary judges of the courts, on particular occasions, to *hear*, try and determine, and punish certain offences, or particular offences alleged to have been committed ; as had been practised in England. Courts of Oyer and Terminer are so called, because they are authorized to *hear* and *determine* criminal cases.

Fines and punishments.

47. The State Bills of Rights generally provide, on this subject ; “That excessive fines shall not be imposed, nor cruel or unusual punishments inflicted.”

The same provision is contained in the federal constitution. *Cons. of U. S. Amendments, Art. VIII.*

In some of the Bills of Rights of the States it is declared “All penalties shall be apportioned to the nature of the offence. No wise Legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. When the same undistinguishing severity is exerted against all offences, the people are led to forget the real distinction in the crimes themselves and to commit the most flagrant with as little compunction as they do the slightest offences. For the same reason a multitude of sanguinary laws is both impolitic and unjust ; the design of all punishments being to reform, not to exterminate mankind.”

In some of the State Constitutions it is provided ; “that no person shall be transported out of the State for any offence committed within the same.” *Illinois.*

“Nor shall any free white citizen be exiled under any pretence whatever.” *Cons. of Mississippi.*

Counsel and hearing at law.

48. “No person shall be debarred from advocating or defending his cause, before any court or tribunal, by himself or counsel, or both.” *Georgia.*

“And in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person or with counsel, as in civil actions.” *California.*

Rights of suffrage. Elections.

49. It is generally provided, in the State Bills of Rights, that all elections shall be free and equal. (j)

(j) See, as to qualification of electors, or the right to vote, further on, Part II. chap. VII. and see chap. IV. Part II.

"All elections ought to be free, and every inhabitant of the State, having the proper qualifications, has an equal right to elect and be elected to office." *New Hampshire.*

—"All men having sufficient evidence of common interest with, and attachment to the community, have the right of suffrage." *Virginia.*

"All freemen, having a sufficient evidence of common interest in, and attachment to the community, have a right to elect officers, and be elected to office." *Vermont.*

In some of the States it is thus provided; "that no property qualification for eligibility to office, or for the right of suffrage, shall ever be required by law in the State." *Mississippi.*

Mode of voting, at elections.

50. In some of the States it thus provided, that all elections by the people, or the Legislature, shall be by ballot. *Lousiana.*

In others, it is provided that at all elections the votes shall be given openly, or *viva voce*, and not by ballot. *Virginia.*

"All votes shall be given *viva voce*, until altered by the Legislature." *Illinois.*

All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*. *Pennsylvania.*

In most of the States the mode of voting at elections by the people is by ballot.

In many of the States the manner of voting is not prescribed by their Constitutions, but is fixed by law.

51. Voting by *ballot* is voting in such a manner that it is not known for whom the particular elector votes. Generally, it is voting with written or printed tickets, folded in such a manner as to conceal the name of the person voted for, until all the votes given at the election after being promiscuously put together are separately read, the names of the voters of particular tickets not being known.

A statement of the constitutional provisions in relation to the right of suffrage, or the qualifications of electors, in the several States, is contained in chapter VII, Part II, of this work.

Tenure and term of office.

52. In regard to the tenure and term of office, it is generally provided, "that all offices shall be held only on the condition of good behaviour." This is called the *tenure* of office.

In some of the States it is thus provided; "No person shall ever be appointed or elected to office in the State for life, or during good behaviour; but the tenure of all offices shall be for some limited period of time, if the person appointed or elected thereto shall so long behave himself well." *Mississippi.*

Offices to be held *during good behaviour* indefinitely, are for life. Generally State officers are for limited terms of years. In some States judges, and other judicial officers, hold their offices for life, on condition of good behaviour. See, further on, chapter VII, Part II.

In some States it is expressly declared in their Bills of Rights; "No office or place whatsoever, in government, shall be hereditary; the ability and integrity requisite in all not being transmissible to posterity or relations." *New Hampshire*.

Eligibility to office.

53. See, above, the head "Elections and rights of suffrage."

In some of these Declarations of Rights it is provided; "that no person ought to hold, at the same time, more than one office of profit." *Maryland. Indiana.*

See, also, chapter VII, Part II.

Perpetuities and monopolies.

54. In some of the State Constitutions it is provided; "that perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed." *North Carolina. Tennessee.*

"That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered." *Maryland.*

Corporations.

55. In the Declaration of Rights of Ohio it is provided; "That every association of persons, when regularly formed within this State, and having given themselves a name, may, on application to the Legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of schools, academies, colleges, universities, and other purposes."

Banks.

56. In the Declaration of Rights of Illinois it is provided; "That there shall be no other banks or moneyed institutions in this State but those already provided by law except a State bank and its branches, which may be established and regulated by the General Assembly of the State, as they may think proper."

There are provisions in the Constitutions of Indiana, Alabama, prohibiting the establishment of any banking company, for the purpose of issuing bills of credit, or bills payable to order or bearer; except a State Bank, with branches, under particular conditions.

See chapt. III, Part II, as to special constitutional provisions

in some of the States, in relation to the incorporation of banks or banking companies.

Taxes.

57. There are contained in these Declarations of Rights certain principles as to the levying of taxes on the people. It is declared, generally, that the people of the State ought not to be taxed, or made subject to the payment of any impost or duty, without the consent of their representatives in the Legislature freely given.

In some of the States it is thus declared: "that the levying of taxes by the poll is grievous and oppressive; therefore the Legislature shall never levy a poll tax for county or State purposes." *Ohio.*

Right to bear arms.

58. The provision on this subject is, generally, "that the people have a right to bear arms for the defence of themselves and the State."

And, "every citizen has a right to bear arms in defence of himself and the State."

In Tennessee the provision is; "Free white men have a right to bear arms," &c.

Militia.

59. There are various provisions as to the militia of a State.

In some of these Bills of Rights it is declared; "that a well regulated militia is the proper, natural and sure defence of a State."

In some of the States it is declared in their Bills of Rights, that every member of the community, as he is protected by it, is bound to contribute his share to the expense of the mutual protection, and to yield his personal service when necessary or an equivalent. *Massachusetts, New Hampshire.*

It is generally thus declared; "that no person who is conscientiously scrupulous of bearing arms can be compelled to do so, provided he pay an equivalent for such service." (*r*) *Missouri, Pennsylvania.*

In the State of Tennessee it is thus provided; "that no citizen of the State shall be compelled to bear arms, provided he shall pay an equivalent to be ascertained by law."

In some States the constitutional provision is; "No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption." *Illinois.*

In some States it is, also, thus provided; "that no priest, preacher of the Gospel, or teacher of any religious denomination

(*r*) See above in this chapter, the head "Religious liberty," &c.

or sect, regularly ordained as such, shall be subject to militia duty, or compelled to bear arms." *Missouri.*

Standing armies.

60. It is generally declared in these Bills of Rights in relation to standing armies ; "That standing armies are dangerous to liberty, and ought not to be raised or kept up, without the consent of the Legislature."

"No standing army shall, in time of peace, be kept up, without the consent of the Legislature."

By the federal Constitution there is a prohibition on the several States. "No State shall, without the consent of Congress, keep troops or ships of war, in time of peace." *Cons. of U. S., Art. I, Sect. X. 2.*

Quartering of soldiers.

61. The provision on this subject is, generally, "that no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law."

Martial law.

62. In some of the States it is declared ; "that no person can in any case be subjected to martial law, or to any pains and penalties by virtue of that law, (except those employed in the army or navy, and except the militia in actual service,) but by authority of the Legislature." *Massachusetts, New Hampshire.*

Subordination of the military power.

63. In general, it is provided, that "in all cases, and at all times, the military shall be in strict subordination, and be governed by the civil power."

Imprisonment for debt.

64. In most of the States it is provided, "that the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the use of his creditors, in such manner as shall be prescribed by law."

"The person of a debtor cannot be imprisoned for debt after he shall have delivered up his property for the benefit of his creditors, in such manner as shall be prescribed by law."

"No person shall be imprisoned for debt." *Cons. of Texas.*

"No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud ; and no person shall be imprisoned for a militia fine in time of peace." *California. (l)*

(l) See Part II. chap. IV, head "Religious Liberty," &c.

Education.

65. In some of the States it is declared, "that education ought to be encouraged by legislative provision."

"Religion, morality and knowledge being essentially necessary to the government and happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience." *Ohio.*

In some of the State Constitutions it is provided, "that the arts and sciences shall be promoted, and "that the Legislature shall provide by law for the establishment of schools throughout the State." (*m*)

"In some States it is constitutionally provided; "The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis."

Promulgation of the laws.

66. In some of the State Bills of Rights there are particular provisions on this subject.

"No person shall be punished but in virtue of a law established and promulgated prior to the offence, and legally applied." *Missouri, Alabama.*

"No Act of the General Assembly shall be in force until it shall have been published in print." *Indiana.*

"Within five years after the adoption of the Constitution, the body of our laws, civil and criminal, shall be revised, digested and arranged, under proper heads, and promulgated in such a manner as the General Assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years." *Alabama.*

Suspension of laws.

67. It is generally declared, "that no power of suspending laws shall be exercised, unless by the Legislature."

The State Constitutions in general, declare that no power of suspending laws shall be exercised, unless by the Legislature, or its authority.

Monarchs in Europe had suspended the operation of the laws of their realms; and there had been cases in which the Governors of the Provinces in this country, by the command of the King of Great Britain, had assumed the like authority. It was designed by these provisions, to establish fundamentally and permanently the correct principle of free government on this subject.

Suits against the State.

68. It is thus provided in some of the States on this subject

(*m*) See Part II. chap. IV.

“Suits may be brought against the State in such a manner, and in such courts, as the Legislature may by law direct.” *Tennessee. Delaware.*

“The Legislature shall by law direct in what manner, and in what courts, suits may be brought against the State.” *Mississippi.*

Slavery and servitude.

69. Some of the Declarations of Rights contain provisions expressly and specially prohibiting slavery.

“There shall be neither slavery nor involuntary servitude in the State, otherwise than for the punishment of crimes, whereof the party shall be duly convicted.” *Ohio, Indiana, Wisconsin, Iowa, Illinois, California.*

“No male person, born in this country, or brought from over sea, ought to be holden by law to serve any person as a servant, slave, or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives at the age of eighteen years, unless they are bound by their consent, after they arrive at such age, or bound by law for the payment of debts, damages, fines, costs, or the like.” *Vermont.*

In some of the States there are express special provisions concerning slavery and slaves, in their Constitutions, though not in those parts thereof denominated Declarations of Rights, which provisions are given, or noticed, in chapter IV, Part II. See in that chapter as to Georgia, Kentucky, Illinois, Mississippi, Alabama, Wisconsin, Iowa.

70. In some of the States there are such provisions as the following, viz. ; “Nor shall any male person, arrived at the age of twenty-one years, nor female person arrived at the age of eighteen years, be held to serve any person as a servant, under pretence of indenture or otherwise, unless said person shall enter into such indenture while in a state of perfect freedom, and on condition of *bona fide* consideration, received or to be received for their service, except as before stated, (that is, in the case of punishment of crimes.) Nor shall any indenture of any negro or mulatto, made and executed out of the State, or made within the State when the term of service exceeds a year, be of the least validity, except those given in the case of apprenticeship.” *Ohio.*

See, also, as to constitutional provisions on this subject, in chapter, IV. Part II.

Administration of justice.

71. What do the State Bills of Rights provide as to the obtaining a remedy by law for wrongs or injuries?

Generally, that all courts shall be open ; and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by dne course of law, and right and justice done him without denial or delay :” Or, as it is expressed, in some of the States, “and every person shall obtain right and justice freely, without being obliged to purchase it ; completely, without denial ; promptly, without delay ; conformably to the laws.”

“No person shall be debarred from prosecuting or defending any civil cause, for or against himself, before any tribunal in the State, by himself or counsel.” *Alabama.*

See, also, above in this chapter, the heads “Searches and seizures,” “Rights of accused persons,” and “trial by jury.”

Right of emigration.

72. There is, in general, a constitutional provision ; “That emigration from the State shall not be prohibited.”

Law of primogeniture.

73. “The law of primogeniture,”—“shall never be in force in this State.” *Texas.*

Entailments.

74. “Nor shall the law,”—“of entailments ever exist in this State.” *Texas.*

Witnesses.

75. “Nor shall witnesses be unreasonably detained.” *Cons. of California.*

Uniformity of laws.

76. “All laws of a general nature shall have a uniform operation.” *California.*

Rights of foreigners.

77. “Foreigners who are or may hereafter become *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native born citizens.” *California, Wisconsin, Iowa.*

Title to land, and tenure.

78. “All lands within the State are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land, hereafter made, are declared to be void.” *Cons. of Wisconsin.*

Reserved rights of the people.

79. In some of the States, it is declared ;

“The enumeration of certain rights, in the Constitution, shall not impair or deny others retained by the people.”

CHAPTER IV.

LEGISLATURES OF THE STATES.

I. In all the States, by their Constitutions respectively, the legislative authority is made a particular and specific one, to be exercised distinctly from the other powers of government. It is so provided in accordance with the system of republican governments by which their powers are distributed among different departments. (*d*)

This authority is termed, in the Constitutions, "the legislative power of the State," or, "the supreme legislative power of the State;" being assigned, as such, to a body of persons, elected periodically by the people.

2. The legislative power of each State is vested, by its Constitution, in a legislature, or "General Assembly," consisting in general of two branches, a Senate and House of Representatives or Delegates; elected by the people of the State.

In Massachusetts and New Hampshire the Legislature, consisting of two branches, is called the "General Court" of the particular State. In North Carolina the most numerous branch of the Legislature is styled "the House of Commons." In Massachusetts the Senators are Counsellors. In New Jersey the government is vested in a Governor, Legislative Council and General Assembly. In Vermont the Legislature consists of one branch, called the General Assembly. In Texas the legislative power is vested in two branches, which together are termed the Legislature of Texas.

The nature, in general, of the legislative department of a government, and the expediency of its being made to consist of two branches, have been the subject of previous remarks. (*b*)

3. The two branches of a State Legislature act separately and independently in their deliberations and proceedings, for the making of laws; though the assent of both branches is necessary to the final passing of a law. (*c*)

With respect to legislative duties, the powers of each branch are, in general, the same. They differ, however, in regard to some im-

(*a*) See, above, Part II, chapt. I.

(*b*) See Part I, chapt. III, p. 36.

(*c*) See, further on in this chapter, the head "Mode of passing laws."

portant matters, as will be seen under the various subsequent heads of this chapter.

4. The authority of a State Legislature includes, in general, the power of originating and proposing laws, altering and amending projects thereof, and deliberating and deciding thereon, at its discretion. The manner in which the action is had, in the enactment of laws, is shown under the proper head in this chapter.

5. In general, the acts done, or laws passed by the Legislature, may be revoked or repealed, altered or amended, by it at another session thereof, or at any other time. They are not binding, in reference to its subsequent action thereon. Contracts made, or rights vested, however, whether under the State or between individuals, by former laws, cannot constitutionally be thus impaired, destroyed or changed. (*d*)

Number of members thereof.

6. The number of members in the Legislatures of the States respectively is generally limited by the Constitutions of the States respectively; in many of the States it is not less than sixty nor more than one hundred in the House of Representatives or most numerous branch, and in the Senate not less than one-fourth nor more than one-third of the number of Representatives. In some of the States the number is greater, and in others less.

Apportionment of members.

7. The members of the Legislatures of the several States are apportioned among the counties and districts thereof, according to the number of taxables in each county or district, or, in some States, of the white male adults; for which purpose an enumeration thereof is made at certain periods.

Qualifications.

8. The qualifications, generally required, to be a member of a State Legislature, are, that a person be a citizen of the State, a resident therein, that he be an adult of a certain age, and have resided for a certain time in the district or county for which he may be elected. A greater age and longer residence are generally required as qualifications of a Senator than of a Representative.

9. In some of the State Constitutions it is provided, that ministers of the gospel, priests or clergymen of any religious denomination, shall not be eligible to the Legislatures. See Part II. chap. III, head "Religious liberty."

10. It is also declared by some of the State Constitutions that persons guilty of particular offences, as bribery at elections, improperly influencing voters, and the like, shall not be elected to the Legislatures. See, further on, chap. VII.

(*d*) See Part I. chap. V.

11. In some of the States, by their Constitutions, duelists, or persons who have been concerned in sending or accepting a challenge to fight a duel, are declared to be incapable of holding any office of trust or profit; or of being a member of the Legislature.

12. "No person who hereafter may be a collector, or holder of public money, shall have a seat in either House of the General Assembly, until such person shall have accounted for and paid into the treasury all sums for which he may be accountable." *Cons. of Indiana, Alabama, Louisiana, Ohio, Tennessee, Kentucky.*

Incompatibility of offices.

13. What is generally provided in a State Constitution as to officers of the United States being ineligible to its Legislature?

That no member of Congress or officer under the United States shall be a member of the State Legislature.

14. What is generally so provided as to State officers?

That a person holding an office (except of attorney at law, or in the militia) under the State, shall not be a member of the Legislature.

15. In some of the States other particular officers are made ineligible to the Legislature.

In some of the State Constitutions it is provided, that "no judge of any court of law or equity, secretary of State, attorney general, clerk of any court of record, sheriff or collector, or any person holding a lucrative office under the United States, or the State, or any foreign government, shall be eligible to the Legislature." (e)

Election of members thereof.

17. As to the qualifications of electors of members of the State Legislatures: In general, at all elections by the people, every white freeman, being a citizen of the United States, of the age of twenty-one years, who has resided in the State for one year preceding, unless absent on public business, who is an actual resident of the township or district where the election is held, and who has paid a State or county tax, is entitled to vote. In some of the States, it is required that a person shall be a freeholder, or own a certain amount of property, in order to his enjoying the rights of an elector. In other States, the right of suffrage is *universal*; neither the payment of taxes, nor the owning of property, being requisite to the exercise of it.

The qualifications necessary in electors of the most numerous branch of the State Legislature are requisite in electors of United States officers. See Part II. chap. VII, head "Elections."

(e) See this head in Part II. chap. VII.

In some States, the qualifications of voters for the Senate are different from those of voters for members of the other branch of the Legislature.

Oath of office.

18. "The members of the State Legislatures,"—"shall be bound by oath or affirmation to support this Constitution." *Cons. of U. S.*

19. It is generally provided, by the Constitution of a State, that the members of its Legislature shall be bound by oath or affirmation to support the Constitution of the State, and to perform the duties of their respective offices with fidelity.

20. "Each member of the Senate and House of Representatives shall, before they proceed to business, take an oath or affirmation, to support the Constitution of the United States, and of this State, and also the following oath: "I do solemnly swear (or affirm) that, as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing whatever, that has a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State." *Cons. of Tennessee.*

See head "Oaths of office," further on, chapter VII.

Term of service.

21. The term of service of the members of the State Legislatures is various. Generally, the Representatives, or members of the most numerous branch, are elected for one year; and the terms of service of the Senators vary in the different States, being in some for three years, and so arranged that one-third of the number is elected every year, and in other States for a shorter or longer period.

In some States the Representatives are elected for two years. Members of the Legislatures may, in general, be re-elected, after the expiration of a particular term of service, indefinitely.

Time of meeting.

22. The State Legislatures are required to meet, in general, at least once a year, as directed by their Constitutions respectively.

In some States, the regular time of their meeting is only once in two years; as in Texas.

Generally, in each State the Governor is authorized, by the Constitution thereof, to convene the Legislature at other times, on extraordinary occasions.

The Governor "may, on extraordinary occasions, convene the General Assembly by proclamation; and shall state to them, when assembled, the purpose for which they shall have been convened; but they shall enter on no legislative business, except that for which they were especially called together." *Cons. of Kentucky, of 1834.*

23. The members of the Legislature may be compelled to attend their meetings. It is generally provided, in a State Constitution, that each branch of the Legislature may compel its members to attend its sessions.

Adjournment.

24. The State Legislatures may adjourn by the joint order or resolution of both houses thereof, at any time. They may thus adjourn to any time which is before the next election for members thereof.

As to the power of either House of a State Legislature to adjourn, generally, it is constitutionally provided that neither House can adjourn for more than three days; nor to any other place, than that in which the two Houses are sitting.

In some of the States, the Governor of the State is authorized, by the Constitution thereof, in case of disagreement between the two Houses of the Legislature as to the time of their adjournment, to adjourn the same to such time as he shall see proper, not exceeding a limited period, or, not beyond the time of the next annual meeting of the Legislature. Such adjournment cannot be to a time beyond the next election of members of the Legislature. As to this power of the Governor, the reader is referred to the next chapter. It thus appears, that in general, the duration of the session of a State Legislature, and the frequency of its sessions beyond the regular period are determined by itself at its discretion. In some States this power is limited by their Constitutions.

Privilege of members from arrest.

25. Members of the State Legislatures have certain privileges in regard to arrests and suits at law.

By the State Constitutions, it is generally provided, that they shall be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same, in all cases except treason, felony, and breach or surety of the peace.

It has been adjudged in some of the States, that members of the Legislatures are privileged, at common law, from arrests, summons, citation or other civil process, during their attendance on the public business confided to them. 4 *Dallas' Reports*, p. 107.

“Members of the Legislature—shall not be subject to any civil process, during the session of the Legislature, nor for fifteen days next before and after the termination of each session.” *California, Wisconsin.*

Freedom of speech or debate.

26. With regard to the privilege of members of the State Legislatures as to speech or debate therein, there is generally a constitutional provision of the State that they shall not be questioned for any speech or debate in the Legislature. (e)

Compensation of members.

27. In most of the States it is constitutionally provided that the members of the Legislatures shall receive a compensation for their services, to be ascertained by law, and paid by the State; in some instances the amount, or the maximum thereof, being fixed by the Constitution.

In some of the States it is also so provided, that no increase of such compensation shall take effect during the year in which it shall be made; or, that no alteration thereof shall be made by any Legislature, to take effect during the existence of the Legislature which shall make such alteration; or, that the compensation may be increased or diminished by law, but no alteration shall take effect during the session at which such alteration shall be made.

The compensation is generally a certain sum for every day during their attendance on the session or sessions of the Legislature, and in going to and returning from the same; or for such attendance and a certain rate for travelling expenses.

SEPARATE POWERS AND DUTIES OF EACH HOUSE.

28. It is generally provided in a State Constitution, that each House shall have all the powers necessary for a branch of the Legislature of a free State.

As to the election and qualification of members.

29. In general, it is expressly provided in the State Constitution, that each House of the Legislature is to judge of the qualifications of its own members.

Contested elections of members are, also, to be determined by the Legislature of the State, in such manner as is directed by law.

It is meant by these provisions, that each House should have the power of judging and determining whether the persons had the qualifications required, or whether their election was had according to the Constitution and laws of the State.

(e) See Part I. chap. III.

Quorum.

30. A majority of each House of a State Legislature constitutes a quorum to do business. And there is generally provision by law for compelling the attendance of absent members. A smaller number than the majority in each House may adjourn from day to day.

In some States two-thirds of each House of the Legislature is necessary to constitute a quorum to do business; as in Tennessee.

Either House is organized by the attendance of a quorum of its members, and the election of its officers, when all questions before it are, in general, according to its rules of proceeding, determined by a majority of the members present. In some cases, the assent of a greater number is made, by the Constitution, necessary to a decision or to the passing of a bill, order or resolution. (*f*)

Each House is thus organized at the first meeting of its members after their election, being then a new House; to be continued, during all its sessions, during the time of service of the members; though its officers may be changed at its pleasure.

Officers.

31. The usual officers of each House are a President or Speaker, as presiding officer, a Secretary or Clerk, a Sergeant-at-arms, and a door-keeper, with deputies and assistants of these last mentioned officers. In general, each House chooses its own officers.

In States where there is a Lieutenant-Governor, he is, generally, by virtue of his office, President of the Senate, having a right to debate in committee of the whole, and when the Senate is equally divided to give the casting vote.

Rules of proceeding.

32. It is, in general, constitutionally provided, that each House shall determine the rules of its proceeding. It is implied that these rules shall be consistent with the federal Constitution and that of the particular State, and with the laws of the State.

Power to punish its members.

33. Each House may punish its members for disorderly behaviour. It is generally so provided by the State Constitution.

Expulsion of members.

34. What power has each branch of a State Legislature to expel any of its members?

It is generally provided in the Constitution of a State that each House of its Legislature may, with the concurrence of two-thirds,

(*f*) See Part I. chap. III. 80, and this chap.

expel a member. In some States a member cannot be thus expelled a second time for the same cause as in Virginia. Members of a Legislature cannot be removed by impeachment. They may be punished by indictment before the courts of justice for bribery, corruption or other misdemeanor. (g)

In Vermont, it is provided by its Constitution, that the Legislature "may expel members, but not for causes known to their own constituents antecedent to their election."

Contempt.

35. Each House of a State Legislature has the power, generally given expressly by the Constitution of the State, to punish its own members for misbehaviour or contempt: and it has the implied power, arising from the nature of its duties, and necessary for their performance, to commit and imprison other persons for contempt. (h)

In some of the States it is expressly provided by their Constitutions, respectively, that "either House of the Legislature shall have authority to punish by imprisonment any person not a member thereof, for contempt or disorder."

It is generally considered that the imprisonment cannot be for a longer time than during the session of the Legislature.

To sit with open doors.

36. It is generally provided in the Constitution of a State, that each House of the Legislature shall sit with open doors unless the business shall be such as ought to be kept secret.

Journal.

37. It is generally required by the Constitution of a State, that each House of its Legislature shall keep a journal of its proceedings, and publish it from time to time, except such parts as may require secrecy.

Yeas and nays.

38. It is generally provided in the Constitution of every State that the yeas and nays of the members of each House of its Legislature shall be taken, on any question, at the request of a certain number of the members, and entered on its journal. In some States it is done at the request of two members; in others, of a greater number. At the calling of the yeas and nays, every member may be compelled to vote, unless excused.

"The ayes and noes shall be taken in each House upon the final passage of every bill, of a general character, and bills making appropriations of public monies." *Cons. of Tennessee.*

(g) See Part I. chap. III, head "Impeachment."

(h) See Part I. chap. III., par. 93.

On a reconsideration of a bill which has been disapproved by the Governor or executive power, the yeas and nays are in general required to be taken and entered on the journal.

In some of the States it is made imperative, by the Constitution, that the yeas and nays shall be taken in each House of the Legislature on particular questions.

Originating of laws.

39. In general, all laws may be originated in either branch of the Legislature of a State.

In Virginia, it is provided by its Constitution: "All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates."

In some of the States it is constitutionally provided, that all bills for raising revenue shall originate in the House of Representatives of the State, the Senate having the power of amendment.

In general, also, each House has the power of proposing amendments to all bills or drafts of laws passed by the other House.

"Bills may originate in either House, but may be altered, amended or rejected by the other." *Cons. of Ohio, Tennessee, Indiana.*

In the language of some of the State Constitutions, each House "shall have a negative on the other."

Prohibitions on the members.

40. "No member of the Council or House of Representatives shall, directly or indirectly, receive any fee or reward to bring forward or advocate any bill, petition, or other business, to be transacted in the Legislature; or advocate any cause, as counsel, in either house of legislation, except when employed in behalf of the State." *Cons. of Vermont.*

Adjournment.

40. The Constitution of a State generally provides, in relation to the Legislature, that "neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

A smaller number than a majority of each House may adjourn from day to day,

Vacancies.

41. Vacancies in the State Legislatures are supplied by the people at new elections.

The Governor by his proclamation, or the Speaker of the proper

House, by his warrant, orders a special election in the vacant district.

The term of service of Senators and Representatives in the State Legislatures is an *integral* term, so that when a vacancy occurs by death, resignation or otherwise, the person elected to fill it only serves out the unexpired time.

Right of protest.

42. "Any member of either House of the General Assembly shall have liberty to dissent from, and protest against, any act or resolve which he may think injurious to the public or to any individual, and to have the reasons for his dissent entered on the journal." *Cons. of Tennessee, Indiana and North Carolina.*

In Ohio and Illinois the constitutional provision is, that any two members of either House shall have such a right.

GENERAL DUTIES AND POWERS OF THE STATE LEGISLATURES.

43. The duties and powers of the Legislature of a State are declared by its Constitution. All legislative authority is only by virtue of the Constitution; being vested, for the most part, in general terms, with special grants and limitations in particular instances. Certain duties are prescribed by the federal Constitution to the State Legislatures respectively, as in respect to the election of Senators and Representatives in Congress.

The State Legislatures are vested with only limited powers; there being restrictions as to the exercise of power by them, in the federal Constitution, and in those of their own States respectively.

44. There are limitations in the federal Constitution, of the powers of the State Legislatures, by the express prohibitions in it of certain powers to the several States or the Legislatures thereof, and by the grant of some exclusive power to Congress or the general government. (*j*)

45. The powers of the State Legislatures may be classed, as powers *granted*, expressly or impliedly, and powers *prohibited* or limited.

46. The powers of the State Legislatures are granted in the Constitutions respectively, for the most part, in general terms, and by conferring express powers or imposing duties which necessarily imply them.

47. The limitations of these powers in the State Constitutions are by specific prohibitions, or limitations, or by provisions and declarations involving the same. (*k*)

48. The rule of construction, then, as to the power of the Legis-

(*j*) See Part I. chap. V.

(*k*) See Part II. chap. III.

lature of the States, under their Constitutions respectively, is, that the grant of power is general, and the prohibition or limitation of it is special.

A different rule prevails as to the construction of the powers of Congress, or the general government, under the federal Constitution ; as has been seen in the first part of this work. (*l*)

49. The powers conferred on the Legislature of a State, by its Constitution, are those so conferred by having vested in it the Legislative power of the State, and those which are specific powers expressly granted.

50. A Legislature by having vested in it the legislative power of the State, possesses all the general and necessary power of the Legislature of a free government ; not prohibited to it by the Constitution of the United States, or that of the State, or contrary to any provision thereof.

In some States it is expressly provided, in their Constitutions, "that the Legislature shall have power to make all laws which they shall deem necessary and proper for the good of the State, and which shall not be repugnant to the Constitution." *Georgia*.

51. The powers prohibited to the Legislature of a State, by its Constitution, are those specific powers expressly forbidden and those which are contrary to any provision of the Constitution.

52. There are powers which may be exercised concurrently by Congress and the State Legislature. They are called concurrent powers, and have been treated of here in the order of the general subject. (*m*)

53. The nature and extent of the powers of the Legislature of a State, in reference to the relation of the State to the general government, and in regard to the general subjects on which Congress has legislated, are matters of great importance. It will be seen, that the nature of this relation, and the distinctions growing out of it, have been kept in view in the previous parts of this work, and throughout it. It has been the aim, to present the general principles applicable to the subject, in their proper connection. (*n*)

54. The principles and rules of construction, which have been given, in reference to the powers of Congress, have a material bearing, in many respects, as to the authority of a State Legislature ; as those are important also, for that purpose, which relate to the construction of Constitutions in general, and to constitutional law. (*o*)

Election of Senators and Representatives in Congress.

55. There are certain duties prescribed by the federal Constitu-

(*l*) See Part I, chapt. III, II.

(*m*) See Part I, chapt. I, p. 24, chapt. II, p. 33, and chapt III, p. 50, 51.

(*n*) See Part I, chapt. II, III. (*o*) See part I. chapt. II.

tion, to the several State Legislatures, in respect to the election of Senators and Representatives in Congress.

"The Senate of the United States, shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years." *Cons. of U. S. Art. I. Sect. 3.*

"The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State, by the Legislature thereof, but the Congress may, at any time, by law, make or alter such regulations, except as to the place of choosing Senators." *Cons. of U. S., Art. I. Sect. 4.*

These subjects are treated of also, in Part I. chapter III.

Appointments to office.

56. In many of the States it is provided by their Constitutions, that certain officers shall be appointed by the Legislature of the State, or by the Senate; or that they shall be nominated by the Governor of the State, and be appointed by and with the approbation of the Legislature or of the Senate. And in some States the power of appointing officers, except in particular cases, may be prescribed by law, and of course may be vested in the Legislature of the State.

In some States, it is provided by the Constitution of a State that in elections to office by the Legislature the vote shall be given *viva voce*, as in North Carolina, Virginia.

Impeachments.

57. It is generally provided in the State Constitutions that all civil officers of the State may be impeached for misdemeanor in office. Impeachments are, mostly, preferred by the House of Representatives of the State, and tried by the Senate.

Revenue. Taxes.

59. In some of the States, by their Constitutions, two-thirds of the members of their Legislatures respectively must be present in order to raise a State tax.

"All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject, as in other bills." *Cons. of Indiana, Mississippi.*

"All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills: provided that they shall not introduce any new matter, under color of an amendment, which does not relate to raising a revenue." *Cons. of Louisiana, Maine, Kentucky.*

60. In general, a Legislature may tax for State purposes, consistently with the federal Constitution and that of the State, all estates and property, in such manner as it may deem proper.

“All property shall be taxed according to its value; that value to be ascertained in such manner as the Legislature shall direct, so that the same shall be equal and uniform throughout the State. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value. But the Legislature shall have power to tax merchants, pedlars and other privileges, in such manner as they may, from time to time, direct. A tax on white polls shall be laid, in such manner and of such an amount, as may be prescribed by law.” *Cons. of Tennessee.*

“No article manufactured of the produce of this State shall be taxed otherwise than to pay inspection fees.” *Cons. of Tennessee.*

“Nor shall lands belonging to persons residing out of the limits of the State ever be taxed higher than the lands belonging to persons residing within the State.” *Cons. of Missouri.*

“The mode of levying a tax shall be by valuation; so that every person shall pay a tax in proportion to the value of the property which he or she has in his or her possession.” *Cons. of Illinois.*

“The Legislature shall provide for an annual sum sufficient to defray the estimated expenses of the State for each year; and whenever the expenses for any year shall exceed the income, the Legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year.” *Cons. of Wisconsin.*

Appropriation of money.

61. “No appropriation of money shall be made for a longer period than two years; except for purposes of education; and no appropriation for private or individual purposes, or for purposes of internal improvement, shall be made without the concurrence of two-thirds of the Legislature.” *Cons. of Texas.*

“Nor shall any appropriation of money for the support of an army be made for a longer period than one year.” *Cons. of Kentucky.*

State debts and loans.

62. In some States the power of the Legislatures to make loans, or contract debts, or provide therefor, is constitutionally limited.

“The aggregate amount of debts hereafter contracted by the Legislature shall never exceed the sum of one hundred thousand dollars, except in case of war, to repel invasions, or suppress insurrections; and in no case shall any amount be borrowed, except by a vote of two-thirds of both houses of the Legislature.” *Cons. of Texas.*

"No law shall ever be passed to raise a loan of money upon the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed in the Senate or House of Representatives, and be agreed to by a majority of the members of each House, and entered on the journals with the yeas and nays taken thereon, and be referred to the next succeeding Legislature, and published for three months previous to the next regular election, in three newspapers of the State, and unless a majority of each branch of the Legislature, so elected, after such publication, shall agree to and pass such law; and in such case the yeas and nays shall be taken and entered on the journals of each House." *Cons. of Mississippi.*

"The credit of the State shall not in any manner be given or loaned to, or in aid of any individual, association or corporation; nor shall the State directly or indirectly become a stockholder in any association or corporation." *Cons. of California, Iowa.*

"The Legislature shall not in any manner create any debt, debts, or liability, which shall singly or in the aggregate with any previous debts, or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due, and also pay and discharge the principal of such debt or liability within twenty years from the time of contracting thereof, and shall be unrepealable until the principal and interest thereon shall be discharged; but no such law shall take effect until, at a general election, it shall be submitted to the people, and have received a majority of all the votes cast for and against it at such election." *Cons. of California, Iowa.*

Corporations.

63. "No private corporation shall be created unless the bill creating it shall be passed by two-thirds of both Houses of the Legislature; and two-thirds of the Legislature shall have power to repeal and revoke, all private corporations, by making compensation for the franchise; and the State shall not be part owner of the stock or property belonging to any private corporation." *Cons. of Texas.*

"No law hereafter enacted shall create, renew or extend the charter of more than one corporation." *Cons. of Pennsylvania, Art. I, Sec. XXV.*

"No Act of incorporation, except for the renewal of existing corporations, shall be hereafter enacted without the concurrence of two-thirds of each branch of the Legislature, and with a re-

served power of revocation by the Legislature ; and no Act of incorporation which may be hereafter enacted shall continue in force for a longer period than twenty years, without the re-enactment of the Legislature, unless it be an incorporation for public improvement." *Cons. of Delaware.*

"Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws, or special Acts, passed pursuant to this section, may be altered from time to time or repealed." *Cons. of California.*

"Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law." *Cons. of California.*

Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for his proportion of all its debts and liabilities. *Cons. of California.*

"The State shall not, directly or indirectly, become a stockholder in any corporation." *Cons. of California, Iowa.*

Currency.

64. "And in no case shall the Legislature have power to issue treasury warrants, treasury notes, or paper of any description, intended to circulate as money." *Cons. of Texas.*

The Legislature shall prohibit, by law, individuals from issuing bills, checks, promissory notes or other paper, to circulate as money." *Cons. of Texas.*

Banks.

65. In some States it is constitutionally provided that no banks shall be incorporated.

"No corporate body shall hereafter be created, renewed or extended, with banking or discounting privileges." *Cons. of Texas.*

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months previous public notice of the intended application for the same, in such manner as shall be prescribed by law. Nor shall any charter for the purposes aforesaid be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same, whenever in the opinion of the Legislature it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators," *Cons. of Pa., Art. I, Sect. XXV.*

"One State Bank may be established with such a number of branches as the General Assembly shall from time to time deem expedient : Provided, that no branch bank shall be established, nor

bank charter renewed, under the authority of the State, without the concurrence of two-thirds of both Houses of the General Assembly; and provided, also, that not more than one bank or branch bank shall be established, nor bank charter renewed, at one session of the General Assembly; nor shall any bank or branch be established, or bank charter be renewed, but in conformity with the following provisions:

1. At least two-fifths of the capital stock shall be reserved for the State.

2. A proportion of power in the direction of the bank shall be reserved to the State, equal at least to its proportion of stock therein.

3. The State, and the individual stockholders, shall be liable respectively, for the debts of the bank, in proportion to their stock holden therein.

4. The remedy for collecting debts shall be reciprocal, for and against the banks.

5. No bank shall commence operations until half of the capital stock subscribed for, be actually paid, in gold or silver, which amount shall in no case, be less than one hundred thousand dollars.

6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note or obligation, issued by the corporation, according to the promise therein expressed, the holder of any such note, bill or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments be resumed by the said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the General Assembly shall sanction such suspension of specie payments; and the General Assembly shall have power, after such neglect or refusal, to adopt such measures as they shall deem proper to protect and secure the rights of all concerned, and to declare the charter of the bank forfeited.

7. After the establishment of a general State bank, the banks of the State now existing may be admitted as branches thereof, upon such terms as the Legislature and the said banks shall agree, subject, nevertheless, to the preceding rules." *Cons. of Alabama.*

"There shall not be established or incorporated in this State any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: Provided, that nothing herein contained shall be so construed as to prevent the General Assembly from establishing a State bank and branches, not exceeding one branch for any three counties, to be established at such places within the said counties as the directors, of the State bank may select; provided, there be subscribed and paid in specie, on the part of the individuals, a sum equal to thirty thousand dollars." *Cons. of the State of Indiana.*

"That there shall be no banks or moneyed institutions in this State but those already provided by law, except a State bank and its branches, which may be established and regulated by the General Assembly of the State as they may think proper." *Cons. of Illinois.*

"The General Assembly may incorporate one banking company and no more, to be in operation at the same time."

"The bank to be incorporated may have any number of branches, not to exceed five, to be established by law; and not more than one branch shall be established at any one session of the General Assembly. The capital stock of the bank to be incorporated shall never exceed five millions of dollars, at least one-third of which shall be reserved for the use of the State." *Cons. of Mississippi.*

"The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws for the deposit of gold and silver; but no such association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money." *Cons. of California.*

"The Legislature shall prohibit by law any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money." *Cons. of California.*

Cities and boroughs.

"It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and contracting debts by such municipal corporations." *Cons. of California.*

Treasury, and State treasurer.

66. It is generally directed by the Constitution of a State, that no money shall be drawn from the treasury but in consequence of appropriations made by law.

In most of the States the State Treasurer is elected by the Legislature; and, when it consists of two branches, by the joint votes of both.

In most of the States, it is a constitutional provision that an accurate statement of the receipt and expenditure of the public money shall be attached to, and published with the laws of the State, at every annual session of the Legislature.

Education.

67. It is generally required by the Constitutions of the States

that education and learning shall be promoted in schools, colleges and academies.

In many instances it is made the duty of the Legislature of the State to establish a general system of education, whereby all children may be taught gratis.

The General Assembly shall—"provide by law for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be taught gratis, and free to all." *Indiana.*

In some States, the constitutional requirement is:

"The Legislature shall, as soon as conveniently may be, provide for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." *Cons. of Pennsylvania, Art. VII, sect. I.*

"The arts and sciences shall be promoted in one or more seminaries of learning." *Cons. of Pennsylvania, Art. VII, sect. II.*

"Schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged in one or more seminaries." *North Carolina.*

In some instances it is provided, that there shall be a school fund established, or preserved, to be perpetual, the interest whereof to be inviolably appropriated to the support of common schools throughout the particular State.

See the head Education, in Part I, chap. III.

"The Legislature shall as early as practicable establish free schools throughout the State, and shall furnish means for their support by taxation on property; and it shall be the duty of the Legislature to set apart not less than one-tenth of the annual revenue of the State derivable from taxation, as a perpetual fund, which fund shall be appropriated to the support of free public schools." *Cons. of Texas.*

"The proceeds of all land that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under the Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A.D., 1841; and all estates of deceased persons who may have died without leaving a will, or heir, and all such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State." *Cons. of California, Iowa.*

In some of the States it is directed by their Constitutions, that provision shall be made by law for the establishment of a State University, and of a sufficient number of colleges.

By some of these Constitutions it is provided, that the land granted to the State for the support of a university, shall be a perpetual fund for that purpose.

Diffusion of knowledge

68. "The General Assembly, at the time they lay off a new county, shall cause at least ten per cent. to be reserved out of the proceeds of the sale of town-lots, in the seat of justice of such county, for the use of a public library for such county; and at the same session, they shall incorporate a library company, under such rules and regulations, as shall best secure its permanence and extend its benefits."

Beneficent asylums and institutions.

69. "It shall be the duty of the General Assembly," "to provide one or more farms to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence." *Cons. of Indiana.*

Lotteries.

70. In many of the State Constitutions, the Legislatures are prohibited to authorize lotteries, and required to prevent them.

"No lottery shall be authorized by the State; and the buying and selling lottery tickets within this State is prohibited." *Cons. of Texas, California, Iowa.*

The Legislature shall have no power to authorize lotteries, for any purpose, and shall pass laws to prohibit the sale of lottery tickets in the State." *Cons. of Tennessee.*

Divorces.

71. In some States the Legislatures are constitutionally restrained altogether from granting divorces; in other States, they are restricted in their power to do so.

"No divorce shall be granted by the Legislature." *Cons. of Texas, California, Iowa.*

"The Legislature shall have no power to grant divorces, but may authorize the courts of justice to grant them for such causes as may be specified by law; provided, that such laws be general and uniform in their operation throughout the State." *Cons. of Tennessee.*

In some States the Legislatures have power, by the Constitution, to pass general laws regulating divorces and alimony; but not to grant divorce or alimony in any particular case. *Cons. of North Carolina.*

“Divorces from the bonds of matrimony, shall not be granted, but in cases provided for by law, by suit in chancery.” *Cons. of Mississippi, Alabama.*

“The Legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the courts of this Commonwealth are or hereafter may be empowered to decree a divorce.” *Cons. of Penna., Art. I, Sect. XIV.*

Rights of married women.

72. In some States the Constitutions contain provisions securing, or requiring legislation in order to secure to married women their separate property, for their sole use and benefit, free from the control of their husbands, and from liability for their debts; to a greater or less extent.

“All property, both real and personal, of the wife, owned and claimed by her before marriage, and that acquired afterwards by gift or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property, as that held in common with her husband.” *Cons. of Texas, California.*

Debtors' property. Homestead.

73. “The homestead of a family, not to exceed two hundred acres of land, (not included in any town or city, or any town or city lot or lots,) in value not to exceed two thousand dollars, shall not be subject to forced sale for any debt or debts hereafter contracted; nor shall the owner, if a married man, be at liberty to alienate the same, unless by the consent of his wife, in such manner as the Legislature may hereafter point out.” *Cons. of Texas.*

“The Legislature shall protect by law from forced sale a certain portion of the homestead or other property of all heads of families.” *Cons. of California.*

The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted. *Cons. of Wisconsin.*

Interest for money. Usury.

74. The Legislature shall fix the rate of interest; and the rate so established shall be equal and uniform throughout the State.” *Cons. of Tennessee.*

Private laws.

75. "The General Assembly shall not have power to pass any private laws to alter the name of any person, or to legitimize any person not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of any infamous crime, but shall have power to pass general laws regulating the same." *Cons. of North Carolina.*

"The General Assembly shall not pass any private laws, unless it shall be made to appear that thirty days notice of application to pass such laws shall have been given, under such directions and in such manner as shall be prescribed by law." *Cons. of North Carolina.*

Suits against the State.

76. "The General Assembly shall direct by law in what manner, and in what courts, suits may be brought against the Commonwealth." *Cons. of Kentucky, Alabama, Missouri, Mississippi, Wisconsin.*

Suits may be brought against the State, according to such regulations as shall be made by law. *Cons. of Delaware.*

Taking private property for public use.

77. "The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owner of said property, or give security therefor, before such property shall be taken." *Cons. of Pennsylvania, Art. VII, Sect. IV.*

In the Declarations or Bills of Rights, and Constitutions of the several States, in general, there are provisions for securing private property and the obligation of contracts, which have been stated, with observations thereon, in a preceding chapter of this work. (*p*)

According to the system of the distribution of the powers of government among distinct departments, the grant of legislative authority does not include the power to put a binding construction, as to meaning and interpretation, on former or existing laws or statutes, so as to effect private rights. A legislature cannot authoritatively declare what the law is, or has been, but only what it shall be. (*q*)

Slaves, servants.

78. "The General Assembly shall not have power to pass laws ;
1. For the emancipation of slaves without the consent of their

(*p*) See "State Bills of Rights, &c." Part II, chap. III.

(*q*) 2 Cranch's Rep. 272 ; 4 Pick. Rep. 23.

owners, or without paying them, before such emancipation a full equivalent for such slaves so emancipated : and

2. To prevent bona fide emigrants to this State, or actual settlers therein, from bringing from any of the United States, or from any of their Territories, such persons as may be then deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this State.

They shall have power to pass laws,

1. To prohibit the introduction into this State of any slaves who may have committed any high crime in any other State or Territory.

2. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandize.

3. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be imported from any foreign country into the United States, or any Territory thereof, in contravention of any existing statute of the United States ;

4. To permit the owners of slaves to emancipate them, saving the rights of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary :

1. To prevent negroes and mulattoes from coming to, or settling in, this State, under any pretext whatsoever ; and

2. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

“ In prosecuting for crimes, slaves shall not be deprived of an impartial trial by jury, and a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, that would be inflicted on a white person for a like offence ; and courts of justice, before whom slaves shall be tried, shall assign them counsel for their defence.”

“ Any person who shall maliciously deprive of life, or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person.”
Cons. of Missouri.

“ The General Assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this

State: Provided, that such slave be the *bona fide* property of such emigrants: Provided, also, that laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or territories. They shall have power to pass laws to permit owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge." *Cons. of Alabama, Kentucky.*

"They shall have full power to prevent slaves from being brought into this State as merchandise, and also oblige the owners of slaves to treat them with humanity; to provide for their necessary food and clothing; to abstain from all injuries to them extending to life or limb; and, in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from such owner and sold for the benefit of such owner or owners." *Cons. of Alabama, Kentucky.*

"The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, unless where the slave shall have rendered some distinguished service to the State, in which case the owner shall be paid a full equivalent for the slave so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State: Provided, that such person or slave be the *bona fide* property of such emigrants; and provided also, that laws may be passed to prohibit the introduction into this State of slaves who may have committed high crimes in other States. They shall have full power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge."

"The introduction into this State of slaves for merchandise, or for sale, shall be prohibited from and after the first day of May, eighteen hundred and thirty-three: Provided, that the actual settler or settlers shall not be prohibited from purchasing slaves in any State in this Union, and bringing them into this State for their own individual use, until the year eighteen hundred and forty-five."

"In the prosecution of slaves for crimes of which the punishment is not capital, no inquest by a grand jury shall be necessary; but the proceedings in such cases shall be regulated by law." *Cons. of Mississippi.*

"The General Assembly shall have power to prevent any slaves being brought into this State, who have been, since the first day of January, 1789, or may hereafter be imported into any of the United States from a foreign country." *Cons. of Kentucky.*

“In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law; except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.” *Cons. of Kentucky.*

“There shall be no future importation of slaves into this State, from Africa or any foreign place. The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of each of their respective owners, previous to such emancipation. They shall have no power to prevent emigrants from either of the United States to this State, from bringing with them such persons as may be deemed slaves by the laws of any one of the United States.” *Cons. of Georgia.*

“Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection by such slave, and unless such death should happen by accident, in giving such slave moderate correction.” *Cons. of Georgia.*

See this head in Part I. chap. I, and in Part II, chap. III, VII.

Compensation of officers, &c.

“The Legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.” *Cons. of Wisconsin. See Part II, chap. VII.*

Free negroes and mulattoes.

79. “It shall be the duty of the General Assembly, as soon as may be, to pass such laws as may be necessary, to prevent free negroes and mulattoes from coming to, and settling in this State, under any pretext whatsoever.” *Cons. of Missouri.*

“All free men of color shall be exempt from military duty in time of peace, and also from paying a free poll tax.” *Cons. of Tennessee.*

Entailments, right of primogeniture.

80. “The Legislature shall regulate entails in such a manner as to prevent perpetuities,” *Cons. of Vermont.*

“The Legislature shall, as soon as may be convenient, pass laws for the abolition of the rights of primogeniture, and for giving an equitable distribution of the real estate of intestates.” *Cons. of South Carolina.*

Dueling.

81. The Constitutions of some of the States provide that persons who shall fight a duel, or be concerned therein, or who shall send, carry and accept a challenge for that purpose, shall be deprived of the right to hold any office of honor or profit in the State, and be otherwise punished as the Legislature may prescribe." *Cons of Tennessee.*

"The Legislature shall pass such laws to prevent the evil practice of dueling as they may deem necessary, and may require all officers, before they enter on the duties of their respective offices" to take an oath or affirmation, declaring that they have not been engaged in a duel, and will not be so engaged during their continuance in office." *Cons. of Mississippi.*

Arbitrations.

82. "It shall be the duty of the General Assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment." *Cons. of Kentucky, Louisiana.*

Internal improvements.

83. "Internal improvements shall for ever be encouraged by the government; and it shall be the duty of the General Assembly as soon as may be, to make provision by law for ascertaining the most proper object of improvement, in relation both to roads and navigable waters; and it shall be their duty to provide by law for a systematic and economical application of the funds appropriated to these objects.." *Cons. of Mississippi, Alabama.*

Rights of accused persons.

84. "No costs shall be paid by a person accused on a bill being returned ignoramus, nor on acquittal by a jury." *Cons. of Delaware, Art. VII, 7.*

Rejected bills in the Legislature.

85. "After a bill has been rejected, no bill containing the same substance shall be passed into a law during the same session." *Cons. of Tennessee.*

"No bill or ordinance which shall have been rejected by either House, shall be brought in again during the session, under the same or any other title, without the consent of two-thirds of each branch." *Cons. of Georgia.*

"Without leave of the House, and notice of six days being previously given." *Cons. of South Carolina.*

Titles of laws.

86. "Nor shall any law or ordinance pass, containing any matter different from what is expressed in the title thereof." *Cons. of Georgia*

"Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title." *Cons. of Texas.*

"No law shall be renewed or amended by reference to its title, but in such case, the Act revised or section amended, shall be re-enacted and published at length." *Cons. of Texas, California.**

Power of the Governor or council as to legislation.

87. In most of the States, there is constitutionally vested in the Governor, or, as it may be, the Council of the State, a particular and qualified power in regard to bills and resolutions passed by the Legislature.

This provision is not to be considered as an exception to the principle according to which the powers of government are distributed among several distinct departments. There is no absolute, final interference with the authority of the Legislature allowed thereby. The regulation is designed to secure the results of its deliberate, equal and constitutional action. And as a part of the connected system existing in a State government it tends to make up the symmetry and strength of the structure.

In most of the States, this power of the Governor of a State, extends only to the approving or disapproving, with a qualified effect, bills or resolutions passed by the Legislature; in other States the Governor and Council may also, propose amendments to such bills or resolutions.

In Vermont it is provided by its Constitution, that "all bills which originate in the Assembly shall be laid before the Governor and Council for their revision and concurrence, or proposals of amendments; who shall return the same to the Assembly with their proposals of amendments, if any, in writing, and if the same are not agreed to by the Assembly, it shall be in the power of the Governor and Council to suspend the passing of such bill until the next session of the Legislature."

In Illinois the constitutional provision is as follows: "The Governor for the time being, and the Judges of the Supreme Court, or a major part of them, together with the Governor, shall be and are hereby constituted a council to revise all bills about to be passed into laws by the General Assembly; and for that purpose shall assemble themselves from time to time when the General Assembly shall be convened; for which nevertheless they shall not receive any salary or consideration, under any pretence whatever; and all bills which have passed the Senate and House of Representatives,

shall, before they become laws, be presented to the said council for revision and reconsideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the bill should become a law of the State, they shall return the same, together with their objections thereto, in writing, to the Senate or House of Representatives (in whichever the same shall have originated,) who shall enter the objections set down by the council, at large, on their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, the said Senate or House of Representatives shall, notwithstanding the said objections, agree to pass the same, by a majority of the whole number of members elected, it shall, together with the said objections, be sent to the other branch of the General Assembly, where it shall also be considered; and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been elected it shall become a law; unless the General Assembly shall, by their adjournment, render a return of the said bill in ten days impracticable, in which case the bill shall be returned on the first day of the meeting of the General Assembly after the expiration of the said ten days, or be a law." *Cons. of Illinois.*

In most of the States the provision is substantially as follows: "Every bill which shall have passed both Houses, shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large, upon the journal, and proceed to reconsider it; if, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that House, it shall be a law; but in such case the votes of both Houses shall be determined by yeas and nays, and the persons voting for or against the bill shall be entered on the journal of each House respectively; if any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting." *Cons. of Kentucky.*

In some States, where such a return of a bill by the Governor is prevented by the adjournment of the Legislature, it is provided that the bill shall not be a law.

In some States, it is provided, that a bill returned by the Governor, with his objections to the Legislature, can be passed, on reconsideration, only by two-thirds of all the members elected

to each House; as in the States of Massachusetts, Maine, New Hampshire, New York, Pennsylvania, Mississippi.

In other States, laws may be finally passed by the Legislature of the State without the bills therefor being presented to the Governor, or Council, for his or their assent, or any action thereon by him or them; as in Delaware, Maryland, Virginia, North Carolina, South Carolina, Tennessee, Ohio.

The power of a Governor of a State to disapprove a bill passed by the Legislature thereof, is called his "veto" power. When he thus disapproves a bill he is said to put "a qualified negative" on it. (a)

Mode of enacting laws.

88. In general, all laws may originate in, and be agreed to, by either House of a State Legislature; except that, in some States, laws for raising revenue must be proposed in the House of Representatives or Delegates of the State. (s) In Virginia all laws must originate in the House of Delegates.

A "bill" in a Legislature, is a project or draft of a law, offered for consideration and adoption by a member or committee of either House, according to the rules thereof. It is so called until it is finally passed and enacted, when it is termed a law, or resolution, resolve, or Act of the Legislature. A law may be also passed by both Houses of a Legislature, and be enacted, in the form of a joint resolution of both Houses.

On general principle, all the members of each House stand on equal footing, with respect to offering a resolution or bill, and the right of argument and debate. There are, however, rules of proceeding adopted by each House, as we have mentioned, whereby the application and exercise of these rights, and the mode of transacting its business, are regulated. (t)

Generally, the decision of the majority of the members of a House is conclusive on any question or proposition; but, it is provided otherwise, in regard to some matters, by the State Constitutions respectively, and the rule is varied or modified, as to other instances, by the rules of proceeding. The constitutional provisions have been already noticed.

According to these rules there are standing committees appointed for each House, to continue during its session or existence, for examination and consideration of specific subjects of legislative inquiry, to which are referred all petitions, documents and papers relative thereto, and whose duty it is to report to the House the facts, with their opinion as to the expediency of any legislation

(a) See Part I, chap. VIII. (s) See above in this chapter, par. 59.

(t) See "Rules of proceeding," in this chapter.

thereon, and to propose bills, either on their own suggestion, or as instructed by the House. Select committees are also appointed, from time to time, on particular subjects, on the resolution of the House, their powers to cease on the performance of their special duties. The committees are directed to be formed, by the rules or resolutions of the House; the members of whom they are to consist being assigned by the President or Speaker, unless it is otherwise specially ordered.

Generally, bills or joint resolutions can only be introduced, in either House, by its proper standing committees; by special committees, when so authorized; or by a member, on special leave granted by a vote of the House.

Usually, every bill or joint resolution, so introduced, is referred to the Committee of the whole House; which consists of all the members; a special chairman being appointed, the Speaker having left his seat, and partaking in the debates, votes and proceedings as other members, and the proceedings being conducted in it with less formality and greater freedom of debate than in the House proper.

It is generally required, by the rules of proceeding, that every bill or joint resolution shall be considered and agreed to two or three times, on so many different days, before its final passage, in either House. In some of the States it is so provided by their Constitutions.

“No bill shall have the force of a law until on three several days it be read over in each House of the General Assembly, and free discussion allowed thereon; unless, in cases of urgency, four-fifths of the House where the bill shall be depending may deem it expedient to dispense with this rule.” *Cons. of Kentucky, Louisiana, Mississippi, Alabama.* See *Cons. of Ohio, Indiana, Illinois, Missouri.*

“Every bill shall be read three times and on three separate days, in each branch of the General Assembly, before it shall pass, except in cases of actual invasion or insurrection.” *Cons. of Georgia, South Carolina, Tennessee.*

Amendments to bills or joint resolutions may be made, on the offer or motion of any member, in the House in which it originated, at any time during its two first readings.

Bills and resolutions are passed, and questions thereon decided, in either House, by a majority of the members present, a quorum attending; except where the assent of a greater number is made necessary by the Constitution of the State, or the rules of the House. The Speaker or President votes thereon as any other member; the bill, resolution, or question being considered as lost or not agreed to, when there is a tie in the votes of the members or an equal number for and against. In States in which the Lieu-

tenant-Governor presides in the Senate, he does not vote, except his casting vote, so called, in case of such a tie, and to determine the question.

After a bill or resolution has been passed on second reading, the question before the House is whether it shall be engrossed for a third reading.

When a bill or resolution, so engrossed, has been passed on third reading, in the House in which it originated, it is transmitted for concurrence to the other House; where the Legislature consists of two branches, possessed of equal powers in regard to legislation.

On general principles a bill or resolution which has been disagreed to, or rejected, may at any time be introduced or offered again. In some States, however, it is constitutionally provided that, after a bill has been rejected, no bill containing the same substance shall be offered or passed into a law during the same session, except with the consent of a prescribed number of each House. (*t*)

A bill or resolution which has been passed on third reading by one House, and transmitted to the other, is referred to a committee, must be read and considered three times, and generally be acted on with the same forms, in its progress, and be subject to amendments, as if it had originated in the latter House. If amendments be made there, they must be acted upon by the former House, and if agreed to by it, the bill is passed; if disagreed to, the House in which they were made must *recede* from them, whereon the bill is passed, or, if they are *insisted upon* by it, the bill fails, unless the two Houses, through committees of conference, or otherwise, agree on the subject. In the case of some bills, as has been stated, the Senate has not power to make amendments.

When a bill or joint resolution has been passed by the two Houses of the Legislature, it is delivered to a joint committee of the two Houses, for *enrollment*, whose duty it is to see that it is correctly copied, or to *compare* a copy of it with the bill; it is then signed by the presiding officers and clerks of the two Houses, and presented by a joint committee, when it is so required, to the Governor, or Governor and Council of the State, for his approval or disapproval of it. If it be so approved, it is signed by the Governor, and in some States sealed with the Great Seal of the State, and it then becomes a law, and is generally filed in the office of the Secretary of State, or Rolls office. If the bill be disapproved by the Governor, or Council, where such authority exists, it is returned, with the objections thereto, to the House in which it originated; and it may become a law, without the approval and signature of the Governor, on being reconsidered and passed again by both Houses in the manner constitutionally provided; or on its not

(*t*) See in this chapter, "Rejected Bills."

being thus returned by the Governor, or Council, within the time so directed. Where, by the Constitution of a State, the Governor is not vested with any power as to approving or disapproving a bill, it becomes a law, when it is finally passed, as above mentioned, by both Houses of the Legislatures, and regularly enrolled and authenticated. The proceedings on a bill in the Legislature consisting of only one body, for the enactment of a law, are analagous to those in other cases, so far as the latter apply.

The authority of a Governor of a State with respect to bills passed by the Legislature is noticed, under proper heads, when referring to his powers and duties in general. (u) The remarks which have been made relative to the mode of enacting laws in Congress, will be found to be applicable to this subject; (v) and there have also been presented under the appropriate heads in this chapter, various constitutional provisions, existing in some of the States, which have the same bearing.

Publication and evidence of the Acts of Assembly or statutes of a State.

89. The statute laws of the several States are published, as provided by law, in annual pamphlets, containing the laws of the State passed within the particular year; in certain newspapers; and, in some of the States, in compilations of the statute laws of the State, prepared as directed by law. These pamphlets and compilations are generally distributed at the expense of the State to the members of the Legislature, the chief State officers, the judges of the courts, the clerks of the courts, justices of the peace, and certain other State and county officers.

The statute laws of a State are proved, in courts of justice and for all legal purposes, by exemplifications or certified copies of the original laws, by the Secretary of State, under the great seal of the State, or by the other officer, by whom they are filed and recorded, with the legally requisite authentication. The printed pamphlets of these laws, and compilations of them, published by authority of the State, are also declared by statute to be evidence of them.

In regard to the proof of such laws in other States, it is declared by the federal Constitution, that "full faith and credit shall be given to the public acts and records of every other State; and Congress may, by general laws, prescribe the manner in which such acts and records shall be proved, and the effect thereof." *Art. IV. sect. I.* By the Acts of Congress, of 1790 and 1804, legislative acts of the States are to be authenticated by the certificate of the Secretary of State, and the great seal of the State.

(u) See in this chapter, par. 87, and further on chapter V.

(v) See Part I. chapt. III. par.

The nature and force of the statutes of a State, their constitutionality and construction, have been the subjects of notice, in that part of the work which relates to the laws, in general, of the several States. (v)

“All laws and judicial decisions shall be free for publication by any person.” *Cons. of California.*

Promulgation of the laws.

“No Act of Assembly shall be in force until it shall have been published in print, unless in case of emergency.” *Cons. of Indiana.*

“The Legislature shall, as soon as conveniently may be, provide, by law, for reducing the statutes, and all Acts of the General Assembly into such order, and publishing them in such manner, that thereby the knowledge of them may be generally diffused.” *Cons. of Delaware.*

Revision of laws.

90. “Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested and arranged under proper heads, and promulgated in such manner as the General Assembly shall direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.” *Cons. of Alabama, Missouri.*

Amendments of the Constitution.

91. In the Constitution of every State, the right of the people to alter and amend the Constitution is recognized, and a mode prescribed for doing so. It is generally provided that the Legislature shall have power to call conventions of the people for the purpose, at its discretion; or with certain restrictions on the exercise of this power. In some instances, the Legislature is vested with power to make and adopt such alterations and amendments, in the manner prescribed.

In most of the States, the Legislatures, in a manner prescribed, may agree upon specific alterations and amendments to be proposed to a convention to be called by it, the convention to act on no others.

“Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and

the Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least one newspaper in every county in which a newspaper shall be published; and if in the Legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form, that the people may vote for and against each amendment separately and distinctly." *Cons. of Pennsylvania.*

"The General Assembly, whenever two-thirds of each House shall deem it necessary, may, with the approbation of the Governor, propose amendments to this Constitution, and at least, three, and not more than six months before the next general election of Representatives, duly publish them in print for the consideration of the people; and if three-fourths of each branch of the Legislature shall, after such an election, and before another, ratify the said amendments, they shall be valid to all intents and purposes, as parts of this Constitution." *Cons. of Delaware.*

"That this form of government, and the declaration of rights, and no part thereof, shall be altered, changed or abolished, unless a bill so to alter, change or abolish the same, shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly, after a new election of delegates, in the first session after such new election." *Cons. of Maryland.*

"The General Assembly may at any time propose such amendments to the Constitution as two-thirds of each House shall deem expedient, which shall be published in all the newspapers published in the State, three several times, at least twelve months before the next general election; and if at the first session of the General Assembly after such general election, two-thirds of each House shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this Constitution: *Provided*, that such proposed amendments shall be read on three several days, in each House, as well when the same are proposed, as when they are finally ratified." *Cons. of Missouri.*

CHAPTER V.

OF THE GOVERNORS AND EXECUTIVE DEPARTMENTS OF THE SEVERAL STATES.

1. In each of the several States, its Constitution provides that there shall be a chief executive department of government, distinct and separate from the others, and having special and peculiar powers.

2. The executive department of a government is that which has the power of carrying the laws into effect; as contra-distinguished from the other departments which either enact the laws, or declare their meaning and application in the administration of justice. The existence of such a department in each State, with certain relations to the general government, is recognized in the federal Constitution. (a)

3. In each State, generally, the supreme executive power of its government is vested in a Governor of the State. He is called the *Executive*, or Chief Magistrate of the State.

The language of a State Constitution, in providing for the organization of this department, is, generally: "The supreme executive power of the State shall be vested in a Governor;" or, "The executive authority of the State shall be vested in a Governor;" or, "The supreme executive authority of the Commonwealth shall be vested in a chief magistrate who shall be styled the Governor of the Commonwealth." In one State the language of its Constitution is, "There shall be a supreme executive magistrate, who shall be styled the Governor of the Commonwealth; and whose title shall be 'His Excellency.'" (b)

The executive power of a government, in its primary exercise, is thus placed in the hands of one person, in order to secure promptness, certainty and energy in the execution of the law, under all circumstances and emergencies.

4. In some States, it is constitutionally provided, that there shall be an *executive council* of the State, to be associated with the Governor, for advising him in the discharge of his duties, and

(a) See Cons. of United States, Art. II, sect. III, 2; sect. II. 4; Art IV, sect. II, 2.

(b) Cons. of Massachusetts of 1780.

whose assent shall be necessary to the appointment of officers by him and to the transaction of the executive affairs of government ; as in Massachusetts, New Hampshire, Vermont, Maryland, Virginia, North Carolina, New Jersey.

In Massachusetts the Senators are also Counsellors, who, or any five of whom, form a council for advising the Governor, and with him constitute a council "for the ordering and directing of the affairs of the Commonwealth." And in New Jersey "any three of the council shall at all times be a *privy council* to advise the Governor in all cases where he may find it necessary to consult them."

5. The executive department of a State government is, of course, possessed of only limited powers, as prescribed by the Constitution of the State. The same rules apply in regard to the construction of its constitutional powers as to the other departments of the government.

6. The Governor may be considered to be the representative and official organ of the State, as a body politic, through whom, in the exercise of his delegated powers, it is to be addressed, applied to, and notified, and its communications, correspondence, intercourse, negotiations, contracts and affairs, are to be made and transacted, conformably with its Constitution and laws. *(g)*

7. While the Governor of a State exercises his office, he is said, in common language, to administer its government, and his term to be his administration of it. Hence, also, he, and the other Heads of Departments in the State, during his term, are so called the State administration.

Election of Governor.

8. The Governors of the several States are generally elected by the people ; but in some States they are elected by the Legislatures respectively, as in Maryland, South Carolina, Georgia, New Jersey. The qualifications of electors or voters for State officers are the subject of notice in a subsequent part of this work. *(b)*

Election of executive council.

9. In New Hampshire and Vermont the members of the executive council are elected by the people ; in Maryland, Virginia and North Carolina, by the Legislatures respectively, and in Massachusetts and New Jersey the legislative Counsellors, or Senators, elected by the people, or a certain number of these counsellors, constitute such a council ; their term of service being the same with that of the Governors respectively.

(g) See Part I. chap. VIII, par. 6.

(b) See, further on, chap. VII, head Elections.

Term of office.

10. The term of service of the Governors varies in the different States; being from one to four years. In some States, it is provided by their Constitutions, that a person shall not be elected to the office for more than one term, or a certain number of terms in succession.

It is generally directed that the Governor shall continue to exercise the office, until another Governor shall be duly qualified; as in case of the trial of a contested election for Governor being protracted beyond the prescribed time of inauguration.

Oath of office.

The State Constitutions generally require that all officers shall be sworn or affirmed to support the Constitution of the State and to discharge their duties with fidelity; as they are to be bound by oath or affirmation to support the Constitution of the United States.

In Georgia, the State Constitution provides that the Governor shall take an oath or affirmation, that he "will faithfully execute the office of Governor to the State of Georgia; and will, to the best of his abilities, preserve, protect and defend the said State, and cause justice to be executed and mercy therein, according to the Constitution and laws thereof." *Art. 2, 5.*

Qualifications.

11. The qualifications to be elected Governor of a State are generally, that a person should be of a certain age, generally thirty years, and should have been a citizen of the United States and a resident of the State for a certain time. And generally no member of Congress, or person holding any office under the general or State government, can be Governor of a State.

In some States the Constitutions provide that no person shall be elected Governor who is not seized and possessed of real estate of a certain value.

"No person shall be eligible to the office of Governor, "who does not possess five hundred acres of land in his own right, within this State, and other property to the amount of four thousand dollars, and whose estate shall not, on a reasonable estimation, be competent to the discharge of his debts, over and above that sum." *Cons. of Georgia.*

Compensation.

12. What compensation do the Governors of the States receive?

The Constitutions of the several States provide that they shall

receive a compensation, to be fixed by law, which shall not be increased or diminished during their terms of office. It is different in the several States; being from one to four thousand dollars a year, and in some instances more. In Ohio, it is one thousand dollars a year, and in Pennsylvania three thousand dollars a year.

Duties and powers in general.

13. It is generally provided in the Constitution of a State, that the Governor thereof "shall see that the laws be faithfully executed;" and that he shall have certain specific powers; and he may be vested with powers by "law," or the Acts of Assembly, not inconsistent with the Constitution.

The Governor "shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed." *Cons. of New York.*

The Governors of the several States possess no other powers than those conferred on them, by the Constitutions and laws respectively.

14. The constitutional clause, "that the Governor shall take care that the laws be faithfully executed," does not, of itself, confer any powers not otherwise possessed by the Governor. His particular duties and powers, not specified in the Constitution of the State, are determined by Act of Assembly, the law of the State.

Power and duty as to the Legislature.

15. It is generally provided in a State Constitution that the Governor may convene the Legislature on extraordinary occasions; and also, in case of the disagreement of the two Houses thereof as to the time of their adjournment, that he may adjourn them to such time as he shall see proper, not beyond a limited period, or beyond the time of their next annual meeting.

In some States the provision is, "that he may, in cases of emergency, convene the Legislature at the seat of government, or at a different place, if that shall have become dangerous, since their last adjournment, from an enemy or from disease." *Cons. of Mississippi, Louisiana, Indiana.*

"The Governor, with the advice of the Council, shall have full power and authority, in the recess of the general court, to prorogue the same, from time to time, not exceeding ninety days, in any one recess of said court; and during the session of the said court, to adjourn or prorogue it to any time the two Houses may desire, and call it together sooner than the time to which it was

adjourned or prorogued, if the welfare of the State should require the same." *Cons. of New Hampshire.*

The Governor shall have power "to convene the Legislature, on application of a majority of the members of the House of Delegates, or when, in his opinion, the interests of the Commonwealth shall require it." *Cons. of Virginia.*

The subject of the convening and adjournment of the Legislature of a State is embraced in the next preceding chapter of this work.

Power as to legislation.

16. In general, it is provided by the Constitution of a State, that any bill passed by the Legislature shall be presented to the Governor, for his approval or disapproval of it; giving him the power of a qualified negative upon it. It is not so, however, in all the States.

The executive of a State has not the right of a negative upon elections by the Legislature, as in cases where the State Constitution gives him a qualified negative upon the laws.

In regard to this head the reader is referred to that part of this work which relates to the Legislatures of the States.

Communications to the Legislature. Messages.

17. It is generally provided in the Constitution of a State that the Governor shall, from time to time, communicate to the Legislature information respecting the operations and affairs of the government, and recommend such measures as he shall deem expedient. Such communications are made in writing and called his *messages* to the Legislature.

Consulting power.

18. As it is generally provided in the Constitution of a State, the Governor may require information in writing from the officers in the executive department, on any subject relating to the duties of their respective offices.

Military power.

19. In each State, in general, the Governor is declared, by the Constitution, to be the commander-in-chief of the army of the State, except when called into the service of the United States. (*h*)

In some of the Constitutions it is added: "but he shall (or "need") not command personally in the field, unless he shall be advised so to do by a resolution of the General Assembly." *Cons. of Indiana, Louisiana, Missouri, &c.*

(*h*) See Part I. chap. III. head Militia.

"He shall have power to embody the militia, when, in his opinion, the public safety may require it." *Cons. of Virginia.*

"And when acting in the service of the United States, the General Assembly shall fix his rank." *Cons. of Alabama.*

"The Governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the State." But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the State." *Cons. of New York.*

In some of the State Constitutions, it is provided that the Governor shall have full power to train, exercise and govern the militia and navy of the State, and to call out the inhabitants into actual military service against its enemies: Provided, that he shall not, by virtue of any power granted to him by the Constitution, or to be granted by the Legislature, transport or oblige to march out of the limits of the State any of its inhabitants, without their free and voluntary consent, or the consent of the General Court. *Cons. of New Hampshire, Massachusetts, Maine.*

There are laws in every State for the regulation of the militia, and providing in what manner it may be called into actual service by the Governor, in case of rebellion, insurrection, or invasion, or upon the requisition of the President of the United States.

By the federal Constitution, "No State, without the consent of Congress, shall keep troops or ships of war in time of peace." *Cons. of the U. S., Art. 1, sect. X. 2.*

To be conservators of the peace.

20. In some of the States, it is provided by their Constitutions that the Governors shall be conservators of the peace throughout their States respectively.

As such officers they have the powers of a judicial magistrate and executive officer, to suppress riots, to arrest or to order the arrest of criminals, to prevent breaches of the peace, and to do acts of the like nature.

Power of appointment to office.

21. In most of the States the power of appointment, as to those officers who are not elected by the people, is conferred by the Constitutions on the Governor, with the advice and consent of the State Senate; in some States this is the case with respect to some of the most important offices, and as to the others the Governor has the sole power of appointment. In some States the Legislature appoints all officers not elected by the people, and the Governor is only authorized to fill vacancies in such offices during the recess

of the Legislature. Generally, all officers are commissioned by the Governor.

In some States, appointments to office are made by the Governor only, with the advice and consent of the executive or privy council. See, further on, chap. VII.

Power to remove officers.

22. Where a Governor of a State has the power of appointing officers, who hold office at will, he can remove such officers at his pleasure. The power of appointment, in such cases, implies the power to remove. (c)

The power of appointing, implies the power to remove an officer, in all cases except where the office is held during good behavior, or its duration for a certain time is specially declared by the law establishing it. (d)

The Governor of a State may be authorized by statute, Act of Assembly, to appoint all officers whose appointment is not otherwise provided for in the Constitution.

Power of pardon and reprieve.

23. By the State Constitutions in general, the Governors are respectively vested with power to grant reprieves and pardons for offences, except in cases of impeachment.

In some of the States this power is vested in the Governor and Council ; as in Vermont, New Hampshire, Massachusetts, Maine.

In some of the States the Governor is required, by the Constitution, to set forth fully in writing, the grounds of all reprieves, pardons and remissions of fines, to be duly registered, and laid before the Legislature ; as in Delaware.

In Connecticut the Governor has power to grant reprieves to the end of the next session of the General Assembly, and no longer.

In Vermont the Governor and Council cannot grant pardons in cases of murder and treason ; but may grant reprieves therein until the end of the next session of the Assembly.

In some States, in cases of treason the Governor may, with the advice and consent of the Senate, grant reprieves and pardons ; and he may, in the recess of the Senate, respite the sentence until the end of the next session of the Legislature. *Texas.*

In some of the States, it is provided that the Governor shall have power, under such rules as the Legislature may prescribe, to remit fines and forfeitures.

Under the power to pardon offences, a Governor may remit the whole or part of the punishment of an offence ; or may grant a conditional pardon.

(c) See Part the First, chap. viii. p. 94.

(d) As to the militia, see Part the First, chap. iii. head Militia.

Under a general power to grant pardons, a Governor of a State may grant a pardon for an offence, before the trial or conviction of the offender. In the States of Ohio, Maine, Massachusetts, Connecticut, and New Hampshire, however, the Constitutions expressly confine its exercise to cases in which there have been such convictions.

A reprieve is the temporary suspension of the sentence of death on a criminal.

“The Governor shall have the power to grant reprieves and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.” *Cons. of California, Wisconsin.*

Power in case of vacancies in Congress.

24. The federal Constitution recognizes the existence of an executive department in each State, and requires the performance by it of certain duties in reference to the general government and the Union.

“When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.” *Cons. of U. S. Art. I, Sec. II, 4.*

25. In reference to the Senate of the United States, it is provided; “And if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.” *Cons. of U. S. Art. I, Sec. III, 2.*

Fugitives from justice.

26. “A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.” *Cons. of U. S. Art. IV, Sect. II, 2.*

There are observations in another part of this work, in regard to the construction of this clause of the federal Constitution, and to the practice under it.

Impeachment and removal from office.

27. The Governors of the several States are, by their Constitutions respectively, made liable to impeachment for treason, bribery, or other misdemeanor in office. It is generally directed

that such impeachment shall be on the presentation of the House of Representatives of the State, to be tried by the Senate thereof. (j)

Register of their acts and proceedings.

28. A register of all the official acts and proceedings of the Governor of a State is generally required to be kept by the Secretary of State.

Authentication of their acts.

29. In general, all their official acts and proceedings are required, either by the Constitution or laws of the States respectively, to be authenticated by the great or lesser seal of the State, with the attestation of the Secretary of State.

Power of the Legislature as to the acts of the Governor.

30. It is generally a constitutional provision in a State that the Secretary of State shall keep a register of the official acts and proceedings of the Governor, and lay the same, with all papers relative thereto, before either House of the Legislature, whenever required so to do.

Secretaries of the Governors.

31. In some of the States, it is constitutionally provided that the "Governor shall have power to appoint his own Secretary."

Vacancy in the office.

32. The Constitution of each State provides in what manner a vacancy in the office of Governor, by refusal to take the oath of office, resignation, removal from office, or death, shall be supplied. Generally, it is directed that, in case of such vacancy, the President of the Senate, or in case of his inability, the Speaker of the House of Representatives of the State, shall exercise the office, either for the unexpired term of the late Governor, or, under certain circumstances, until another Governor shall be duly qualified. In some States it is provided that in case such vacancy occurs a certain length of time before the end of the term of the office, there shall be another Governor elected at the next general election, or on certain previous notice.

In some States, in cases of such vacancy, the office so devolves upon the Lieutenant-Governor.

In some instances, it is declared that when the Governor is impeached, or absent from the State, there shall be a vacancy, to

(j) As to impeachments, See Part I. chap. III.

be filled as above mentioned, until the Governor shall return or be acquitted, or another Governor be duly qualified.

In some States, on "the disability of the Governor," the office shall be exercised as in cases of vacancies from the above mentioned causes, until the disability be removed, or another Governor be duly qualified.

Lieutenant-Governor.

33. In some of the States there is a Lieutenant-Governor ; generally required to possess the same qualifications, and elected at the same time, in the same manner, and for the same term, as the Governor. In Massachusetts he has, by the Constitution, the title of "His Honor."

In those States in which there are an executive Council and Lieutenant-Governor, he is a member of it, and presides in it, when the Governor is absent.

In some States, he is, by virtue of his office, President of the Senate of the State ; having, however, only a casting vote, in case of an equal division therein. His office, in this respect, is referred to, in the chapter which treats of the Legislatures of the States.

In case of a vacancy in the office of the Governor, by removal from office, resignation, absence from the State, death, or otherwise, the office generally devolves upon the Lieutenant-Governor.

In Virginia, the senior Counsellor is the Lieutenant-Governor.

Executive departments of a State government.

34. There are in each State several departments of the government, connected with its chief or supreme executive department, as provided by its Constitution. They are under the charge of distinct officers, as, generally, a Secretary of State, State Treasurer, State Auditor or Comptroller, Secretary of the Land Office, and Attorney General of the State. They are sometimes called Heads of Departments, in the State government ; and are said, in common language, to form the administration of the State for a particular term. The Attorney General is properly a judicial officer, appertaining to the judiciary, though having, for some purposes, a connection with the executive department.

In several States some of them are appointed by the Governor ; but generally they are elected by the Legislatures, though in some States by the people. Their term of office is generally the same with that of the Governor ; though in many instances the State Treasurer is elected annually.

Though much of the business in the office of the Secretary of State is transacted under the instructions of the Governors, those officers are not subordinate to the Governors, as being subject to

his control and direction, but exercise their powers independently, under the Constitution and laws. (*k*)

In most of the States there is a Superintendent of Common Schools, being at the head of the department of Common Schools.

(*k*) See, further on, chap. VII, head State and State officers.

CHAPTER VI.

OF THE COURTS AND JUDICIARY OF THE SEVERAL STATES.

1. In the form of government of each State, as established by its Constitution, the judiciary is made a chief and essential part of its system.

2. A judicial department of the government is thus erected, as distinct and separate from its other branches ; such an organization being regarded as an object of great interest and care in the scheme of republican institutions.

3. The judiciary is a co-ordinate branch of the government, with the legislative and executive departments thereof, and independent of them ; deriving, in like manner with them, its authority, through the Constitution, from the people, and being equally the representatives of the people. (a)

4. To this department it belongs to interpret, apply and enforce the Constitution and laws, by its judgments and orders, in reference to particular cases and individuals, in the regular course of the administration of justice. (b) The independence of its position, in relation to the other departments, is the more important in a free constitutional government, as it may be thus required to decide upon the validity of their acts and proceedings, in respect to the Constitution.

5. The Constitution of each State provides that its judicial powers shall be vested in certain courts, described in the Constitution, and in such other courts as shall be established by law. These courts of justice constitute the judicial department, the judiciary, of the State ; the judges being judicial officers of the State.

6. The courts of a State, are *courts of record*, or *courts not of record* ; the former being those which have a seal and keep records of their acts and proceedings.

7. They are also distinguished as courts of *civil* jurisdiction, and those of *criminal* jurisdiction ; and as courts of *original* and those of *appellate* jurisdiction. (c)

(a) See Part I, chap. I ; and Part II, chap. I.

(b) See Part I, chap. IX, title Judiciary.

(c) See explanation of terms, Part I, chap. IX.

9. In some of the States there are courts which differ from the other courts in possessing exclusive *chancery*, or *equity*, jurisdiction. In most of the States the jurisdiction of the courts is, in this respect, of a mixed kind, consisting of both common law and equity jurisdiction. The nature of chancery and equity law and jurisdiction has been already noticed. (*d*)

10. Generally, the ordinary courts for each State are; for the whole State, an appellate court, called the Supreme Court, or Court of Errors and Appeals; and for every county, a court of original civil jurisdiction called a Court of Common Pleas, and also Courts of Quarter Sessions of the Peace and of Oyer and Terminer and Gaol Delivery, of original criminal jurisdiction, an Orphans' Court, and Register's Court; which courts are held in some States by the same judges, and in others by different judges; and in a few of the States there is in every county a court of *chancery or equity*, held by a judge called a *chancellor*. There exists in some States a court in every county held by a single judge of the Supreme Court, called a Circuit Court, and having original jurisdiction, as to the higher crimes and offences, and in civil cases of importance where the sum or value in dispute exceeds a certain amount; an appeal being allowed from this court to the Supreme Court in *bank*; and where there is not such a court, there is, in some instances, a District Court in every county, held by a judge appointed for the purpose, with similar jurisdiction.

In some States there is a Court of Probate for each county; before which wills and testaments are proved, and questions of business relating to them adjudicated and transacted. (*e*)

Mayor's or Recorder's Courts are held only in cities. These are courts of record. There are likewise one or more justices of the peace (*e*) in every township, borough, or district of each county, and aldermen in the cities.

11. The appellate courts of a State, generally, are composed of three or more judges; who hold a session of the Court once a year for the State; in some of the States they hold sessions of the Court in several districts of the State, assigned for the purpose.

12. For the purpose of organizing the Courts of Common Pleas or ordinary county courts, generally, a State is divided into judicial districts or circuits, consisting of several counties; for each of which districts or circuits a President Judge is appointed, who holds the court in every county therein, together with two or more Associate Judges appointed therefor. Such courts are held at

(*d*) See Part II, chap. II, par.

(*e*) See further on, in this chapter, the head Justices of the Peace and Aldermen.

several stated periods during the year, and as occasion may require.

13. Have the State courts jurisdiction under the laws of the United States?

In some cases, there is jurisdiction conferred by Acts of Congress on the State courts and magistrates. It has, however, been adjudged that they are not obliged to exercise such jurisdiction; though they may exercise it, if authorized by the laws of the State.

14. May the State courts decide that an Act of Congress or law of a State is unconstitutional and void?

They may, in the regular course of the administration of justice, regard an Act of Congress, or any measure or proceeding by it or by any department of the general government, as void and nugatory, as being contrary to the federal Constitution; or a law of the State, or any act of its government, as void, as repugnant to either the federal or State Constitution.

15. There may be an appeal in certain cases to the Supreme Court of the United States from a State court.

Under the federal Constitution, and the judiciary Acts of Congress, there may be an appeal from the final decision of the highest court of law or equity in a State to the Supreme Court of the United States, in cases where such decision has been against the validity of an Act of Congress, treaty, or any commission or authority derived from the federal government, or in favor of the validity of any State Constitution, law or authority, where its validity has been drawn in question on the ground of repugnancy to the federal Constitution. (*f*)

16. There are some cases in which the State courts have jurisdiction concurrently with the United States courts. (*g*)

17. There are courts of the United States having jurisdiction, and some of which hold their sessions, within the States severally.

The Supreme Court of the United States exercises its jurisdiction within all the States; and there is held within each State a Circuit Court, and District Court of the United States, having jurisdiction therein. Their jurisdiction is altogether under the laws of the United States and the federal Constitution. They are entirely distinct, as to organization and jurisdiction, from the State courts; according to the difference between the government of the Union, and any State government. In some cases, by Acts of Congress, the State courts have jurisdiction concurrently with the Circuit and District Courts of the United States. (*h*)

Constitutional principles in the administration of justice.

18. In most of the States there are Constitutional provisions

(*f*) As to the federal Sup. Court, See Part I, chap. IX.

(*g*) See Part I, chap. IX.

(*h*) See Part I, chap. IX, par.

which recognize certain principles and rights relative to the administration of justice, and declare them to be peremptory and absolute. The right of trial by jury, the privilege of the writ of *Habeas corpus*, freedom from unlawful arrest or seizure, the illegality of warrants issued without oath, the right of a party or an accused person to be heard in court by himself or counsel, and not to be compelled to accuse himself, the prohibition of cruel, excessive and unusual fines and punishments, the right of being discharged on bail, and the like, have been thus permanently secured. These provisions have been particularly noticed, under appropriate heads, in another part of this work. (i)

"Judges shall not charge with respect to matter of fact, but shall state the testimony and declare the law." *Cons. of California*.

Judges of the courts.

18. In most of the States, the mode of the appointment of the judges is constitutionally determined; in some it is so declared that they shall be appointed as may be prescribed by law.

It is generally provided in the Constitution of a State that the judges of the several courts shall be nominated, and, by and with the consent of the Senate, appointed by the Governor of the State. In some States they are elected by the Legislatures; and in others, some of the judges are elected by the people.

It is generally required, in the State Constitution or laws, that the persons appointed or elected judges shall "be learned in the law," except that, in some cases, in the Courts of Quarter Sessions of the Peace and other county courts, there are associated with the President of the court justices of the peace, and other persons called Associate Judges, who are not required to be such, in a technical sense.

In some States persons are disqualified to be appointed judges, or to continue in office as such, by advanced age; in most cases, seventy years.

In some States a person is not eligible, or cannot be appointed to the office of a judge of a court, who has not at the time attained a certain age. (j) See Part II, chap. III, IV.

Term of office.

19. In some of the States, the judges of the courts hold their offices, as declared by their Constitutions respectively, for life, during good behavior; and in other States, for a term of years.

In the original States, by their first Constitutions, judges of courts were appointed for life, during good behavior; but, o late

(i) See Part II, chap. III, IV.

(j) *Cons. of Mississippi*.

years, in those whose Constitutions have been amended, and in States newly formed, they hold their offices for a limited term of years.

In some of the States, it is provided that no judge shall continue in office, after a certain period of his age; generally seventy years.

Incompatibility of office.

20. It is generally provided in the State Constitutions, that the judges shall not hold any other office of profit under the State.

And it is, also, so provided, that no member of Congress, or officer of the United States, shall at the same time hold any office in the State.⁽ⁱ⁾

In some States, the Constitutional provision is, that no judge of a court shall hold any other office or public trust.

"They shall hold no other office of profit, nor receive any fees or perquisites, in addition to their salaries, for business done by them." *Cons. of Delaware.*

Restrictions as to business.

"No judge of any court, or justice of the peace, shall act as an attorney, or be of counsel, to any party, or originate any civil suit, in matters which shall come before him as judge, or justice of the peace." *Cons. of New Hampshire.*

Salaries.

21. The several State Constitutions generally provide that the judges shall receive, at stated periods, a compensation to be fixed by law, and paid by the State, which shall not be diminished during their continuance in office; and that they shall not receive any fees or perquisites of office.

"Each of the judges—shall receive a salary, of not less than one thousand five hundred dollars," *Cons. of Wisconsin.*

In some States the salaries of judges cannot be increased during their term of office.

"The Legislature shall impose a tax on all civil suits—which shall be a fund toward the payment of the salaries of judges." *Cons. of Wisconsin.*

Impeachment.

22. The judges of the several States are liable to impeachment.

It is generally provided by the Constitutions of the several States that they may be impeached for misbehavior in office. ^(j)

(i) See, further, chap. VII, head Officers in general.

(j) See Part II, chap. IV, par.

Removal from office.

23. How may the judges, in some of the States, be removed from office on the address of the Legislatures?

In some of the States, it is provided by the Constitutions thereof, that the judges, for any reasonable cause which shall not be sufficient ground of impeachment, may be removed from office on the address of two-thirds of both branches of the Legislature.

Are the judges liable to be removed from office on conviction, by indictment, of misbehavior in office, or of any infamous crime?

It is generally so provided in the Constitutions of the several States. (*k*)

"The judges of the several courts of this State, for wilful neglect of duty or other reasonable cause, shall be removed by the Governor on the address of two-thirds of both Houses of the Legislature; the address to be by joint vote of both Houses. The cause or causes for which such removal shall be required, shall be stated at length in such address, and on the journals of each House. The judge so intended to be removed shall be notified and admitted to a hearing in his own defence, before any vote for such address shall pass; the vote on such address shall be taken by yeas and nays, and entered on the journals of each House." *Cons. of Mississippi.*

In some States, the cause for such removal, on the address of the Legislature, must be wilful neglect or other reasonable cause, which shall not be sufficient ground of impeachment.

"All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior; except such concerning whom there is different provision made in this Constitution. Provided nevertheless, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature." *Cons. of Massachusetts, New Hampshire.*

"Judges may be removed from office by a concurrent vote of both Houses of the General Assembly; but two-thirds of the members present must concur in such vote, and the cause of the removal shall be entered on the journal of each. The judge against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with the copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereon." *Cons. of Virginia.*

"No law abolishing any court shall be construed to deprive a judge thereof of his office, unless two-thirds of the members of each House present, concur in the passing thereof." *Cons. of Virginia.*

(*k*) See, further on Chap. VII., par 54.

Duty as to the Legislature, &c.

24. The Justices of the Supreme Judicial Court, "shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate, or House of Representatives." *Cons. of Maine.*

"Each branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Superior Court upon important questions of law and upon solemn occasions." *Cons. of New Hampshire, Massachusetts.*

Opinions of judges..

25. The judges of all the courts in this State shall, as often as it may be possible so to do, in every definite judgment, refer to the particular law in virtue of which such judgment is founded." *Cons. of Indiana.*

In some States it is provided by law, that the judges, "learned in the law," shall, when requested by a party interested, file in writing the reasons for their opinions, on decisions or judgments made by them.

"Judges shall not charge juries as to matters of fact, but may state the testimony and declare the law." *Cons. of California.*

Justices of the peace.

25. Justices of the peace are officers, one or more in every township, whose general jurisdiction is that of *conservators* of the peace, having authority to receive information and complaints of criminal offences, and to cause the offenders to be arrested and committed for trial before the proper court, and in bailable cases to admit prisoners and others to bail. In some States they have power to try and punish for offences, of the lesser kind, as assault and battery, and the like. In some States, also, they have conferred on them, by Act of Assembly, jurisdiction to try and determine civil suits, where the sum or value in controversy does not exceed a limited amount. (1)

In some States, they are appointed by the Governors, with the consent of the Legislature; in other States, by the Legislature; and in others, they are elected by the people; and in general, for a term of years.

They are paid stated fees or perquisites of office, as costs of prosecution or suit, or by the persons for whom the services are performed.

Aldermen.

26. Aldermen are judicial magistrates in cities; having jurisdiction and powers similar to justices of the peace; and especially

(1) See head Justices of the Peace, further on, chap. VII.

of prosecutions and suits for violations of the ordinances and by-laws of the cities, and of proceedings under them. They are generally appointed by the Governor of the State, or elected by the people, for a term of years.

Prothonotaries, and clerks of the courts.

27. The officers of the State courts are, usually, prothonotaries or clerks, masters in chancery, attorneys at law, sheriffs and constables, bailiffs or tipstaves.

There is generally a prothonotary or clerk for each court. In some of the States the same person is prothonotary or clerk of all the courts in a county.

His regular duties are, to keep a record of the judicial proceedings; to keep the seal of the court; to issue all writs and process of the court, file and preserve all papers and documents relative to the business thereof, and to give certified copies of the same, under the seal of the court, when duly required.

He is appointed in different modes, in the several States; by the Governor, the election of the people, or the appointment of the particular court.

His compensation is derived, generally, altogether from prescribed fees and perquisites of office.

Attorneys at law.

28. Attorneys at law are persons learned in the law, admitted by the courts, under the rules thereof, to institute suits, manage causes and conduct proceedings, for others having business therein. They are officers of the courts. They are liable to be struck off the roll of attorneys, or otherwise punished, by the courts for misbehavior in office.^(m)

The Attorney General is the legal adviser and attorney at law of the government, and has the superintendence of all the criminal prosecutions in the State. The prosecuting attorneys are either the deputies of the Attorney General, appointed by him at his pleasure for the several courts, or elected by the people, who manage and conduct on the part of the State all criminal cases and proceedings in the courts of justice.

Sheriffs and coroners.

29. The sheriff is the executive officer of the courts; generally, elected by the people, for a term of years, in every county. It is his duty to serve and execute all process, writs, orders, judgments, decrees and sentences of the courts in his county. He may appoint deputies, and remove them, at pleasure. He is by virtue of his office conservator of the peace, and authorized to prevent disturbances of the peace, to suppress riots, affrays and unlawful

^(m) See head Attorneys at law, Part I, chap. IX, and further on, ch. VII.

assemblies, and to arrest criminals, and for this purpose he may require the assistance of the citizens, and, if necessary, summon the *posse comitatus*, or power of the county, to aid him. There are often various duties specially required of him, as a county officer, by Act of Assembly. His compensation is from fees and perquisites of office, fixed by law. The courts are, also, authorized to appoint constables or tipstaves to attend them at their sessions as ministerial officers.⁽ⁿ⁾ The office of a coroner is the subject of notice, further on, in chapter VII.

Constables.

30. What officers are constables?

They are civil, executive or ministerial officers, in every township or parish of a county, or ward of a city. They are elected by the people of the township or parish, or ward of a city for the term of one year. Their regular duty is to serve and execute all warrants, process, writs, orders and judgments of justices of the peace, and aldermen. They are by virtue of their office conservators of the peace, and are authorized to prevent disturbances of the peace, suppress riots, and arrest criminals, on their own view, or on the warrants of the civil magistrates. There are, also, various duties imposed on them, by special statutes, relative to their townships or wards. They are compensated by prescribed fees and perquisites, and allowances for particular services. The courts are generally authorized to appoint a certain number of constables to attend their sessions, to preserve order therein, and perform other ministerial services.⁽ⁿ⁾

Tribunals of conciliation.

31. "Tribunals for conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in presence of such tribunal, in such cases as shall be prescribed by law." *Cons. of California, Wisconsin.*

Publication of judicial decisions.

32. "All laws and judicial decisions shall be free for publication by any person." *Cons. of California.*

Law and facts.

33. "Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law." *Cons. of California.*

⁽ⁿ⁾ See these heads, further on, in chap. VII.

CHAPTER VII.

OF A STATE AND STATE OFFICERS; AND COUNTIES, TOWNSHIPS, CITIES AND BOROUGHs, AND THE OFFICERS THEREOF.

1. Each State as an organized government is a body politic. It is considered in law as a public municipal body, in the nature of a corporation. (*a*)

It has its appropriate title or name, generally established by its Constitution, in which its correspondence, business and affairs are transacted; and its seal, by which its acts and proceedings are authenticated.

It may sue at law, and in certain cases, under the Constitution of the Union, it may be sued in the federal courts, and, when it is so provided by the laws of the State, in its own courts. A State cannot be sued by its own citizens, or by those of another State, or of a foreign country, except as provided by its own laws. (*b*) It is a principle of law, that a nation, state, or government, cannot be sued at law, except with its own consent. In some instances, it is provided by the Constitution of a State "that suits may be brought against it in such manner as shall be directed by law." (*c*)

In the Constitutions of some of the States it is expressed, that the people of the particular territory thereby "formed themselves into a free, sovereign and independent body politic, or State, by the name of the Commonwealth," or State, as specified. (*d*)

State Seal.

2. Generally, in the Constitution of a State it is provided that there shall be a State seal, to be kept in the office of the Secretary of State, for the authentication of commissions, and other public acts and documents. (*e*) In some cases, there are the "Great

(*a*) See the head "Corporations," Part II, chap. II.

(*b*) See Part I, chap. IX, title "Judiciary of the U. S."

(*c*) See Part II, chap. IV.

(*d*) See Cons. of Massachusetts, New Hampshire.

(*e*) See Part II, chap. V.

Seal," and "Lesser Seal" of a State, to be applied to public documents of a greater or less importance respectively.

Prosecutions at law.

3. The Constitution of each State declares that all prosecutions at law shall be carried on in the name and by the authority of the State, and conclude "against the peace and dignity of the same." Prosecutions, in this sense, are charges, informations, proceedings and indictments, at law, for crimes and misdemeanors. All crimes are offences against the State.

In monarchical governments prosecutions and process are in the name of the King or supreme ruler.

Process.

4. It is constitutionally required in the States that the style of all process shall be respectively "The State," or "The Commonwealth," of the particular name, or "The People" of the State. The process is considered as issued by the authority of the State, and as containing the command or requisition of the State.

Citizens of a State.

5. The citizens of a State are the free inhabitants therein, born within the United States, or naturalized under the Acts of Congress. The nature of citizenship, and the method of naturalizing aliens, have been the subjects of notice in other parts of this work. (f) The reader is, also, referred to the head Qualifications of electors, in this chapter.

*Immigrants, and denizens.**

In some of the States, the rights and privileges of immigrants settling in a State are declared by its Constitution.

"The Legislature shall have power to admit to all the rights and privileges of free white citizens of this State all such persons of the Choctaw and Chikasaw tribes of Indians, as shall choose to remain in this State, upon such terms as the Legislature shall from time to time see proper." *Cons. of Mississippi.*

"Every person of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, and by other just means acquire, hold and transfer, land and other real estate; and after one year's residence shall be deemed a free denizen thereof, and be entitled to all the rights of a natural born subject of this State, except that he shall not be elected Governor, Lieutenant-Governor, Treasurer, Coun-

(f) See Part I, chap. I, III, VII *See Part II, chap. III, IV.

sellor, or Representative in the Assembly, until after two year's residence." *Cons. of Vermont.*

Oath of allegiance.

6. In some States, the Constitutions require that members of the Legislature, all officers, citizens exercising the right of suffrage, and immigrants, in order to enjoy the privilege of citizens, shall take a prescribed "oath or affirmation of allegiance" to the State.

"You do solemnly swear (or affirm) that you will be true and faithful to the State of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the Constitution or government thereof, as established by convention." *Cons. of Vermont.*

"I, A. B., do solemnly swear, that I will bear faith and allegiance to the State of New Hampshire, and will support the Constitution thereof." *Cons. of New Hampshire, Massachusetts,*

Census or enumeration of inhabitants.

7. By Acts of Congress, in pursuance of the federal Constitution, a census of all inhabitants is taken for all the States once in every ten years. And it is required by the Constitution of a State, and provided by its laws, that an enumeration of the taxable inhabitants in each county shall be made periodically, in most instances, every five or seven years, by the township assessors, under the direction of the county commissioners, board of police, or other officers; the returns thereof to be transmitted to the proper State department.

OF OFFICERS IN GENERAL.

Appointment and election.

8. Offices, in a State, are created either by its Constitution, or in pursuance thereof by law. They cannot be otherwise established.

9. The Constitution of a State generally provides that there shall be certain State and county offices, and in what manner persons shall be appointed or elected thereto. Such offices, having their existence by the express provision of the Constitution, are called constitutional offices, in distinction from such as, not being named or specified in it, are formed by laws passed by the Legislature, by virtue of a discretionary power vested therein.

10. In some instances, the mode of appointment or election to certain offices is not fixed by the Constitution, being left to be determined by law.

11. Offices not enumerated in the Constitution of a State, or new offices, may be established by laws enacted for the purpose, and the manner of appointment to them be thereby directed, either by virtue of powers expressly given to the Legislature by the Constitution, or under its general legislative authority, where that is not limited by express provision.

Vacancies.

12. It is generally provided by the Constitution of a State, that in case of vacancies in offices, whose incumbents were elected by the Legislature or the people, the Governor shall supply the same by appointments to continue until the next session of the Legislature, or until a special election by the people can be held, or until the next regular or general election respectively.

Classification of officers.

13. The officers of a State may be, generally, classed as State officers, county officers, and township, parish, or ward officers. In cities and boroughs, there are officers of those corporations respectively.

They may, also, be considered, in relation to the nature of their duties, as either judicial or executive; and as either civil or military.

Prerequisite qualifications for office.

14. In general, all citizens, resident in the State, may be appointed or elected to office. In some cases, a previous residence in the State, and in the particular county, township or parish, city, borough or ward, for a certain time, is requisite, unless the person has been absent on public business.

In the Bills of Rights of some of the States it is declared, "that every inhabitant of the State, having the proper qualifications, has an equal right to be elected or appointed to office." And it is, in general, thus declared that "all elections shall be free and equal;" and that "every inhabitant of the State, having the proper qualifications, has an equal right to elect, and be elected, into office."

In some States a person cannot hold particular offices, unless he possesses real estate of a certain value; or, in other cases, such real estate, or personal property worth a certain amount.

In some States, it is provided by their Constitutions, that a person cannot be elected as a member of the Legislature, or appointed to certain offices, unless he has arrived at a prescribed age; and, in some cases, that he cannot hold a judicial office after a certain period of his age.

"No person who may hereafter be a collector or holder of public

moneys shall have a seat in either House of the General Assembly, or be eligible to any office of profit or trust under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable." *Cons. of Alabama, Missouri.*

Duelists disqualified.

15. Some of the State Constitutions provide that no person who has fought a duel, or been concerned therein, or in sending or accepting a challenge to fight a duel, shall be capable of holding any office of trust. In some instances it is so provided that the Legislature of the State may enact laws to exclude such persons from office; and in some cases, to require all officers, before they enter on the duties of their offices, to take an oath or affirmation, that they have not fought a duel, or been engaged therein by sending or accepting a challenge to fight a duel, and that they will not be so engaged during their continuance in office. (*g*)

Religious sentiments.

It is generally provided in the State Constitutions, that no person who acknowledges the being of God and a future state of rewards and punishments shall be disqualified on account of his religious sentiments to hold any office.

16. In some States, the provision is, "that no religious test shall ever be required as a qualification to any office or public trust under the State."

See the head "Religious liberty and right of conscience," in the third chapter of this part of the work.

Bribery at elections.

17. "Every person shall be disqualified from holding any office or place of honor or profit under the authority of this State, who shall be convicted of having given or offered any bribe to procure his election." *Cons. of Mississippi, Alabama.*

"Any elector who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the laws shall direct. And any person who shall directly or indirectly give, promise, or bestow any such reward, to be elected, shall thereby be rendered incapable, for six years, to serve in the office for which he was elected, and be subject to such further punishment as the Legislature shall direct." *Cons. of Tennessee, Ohio.*

"Every person shall be disqualified from serving as Governor, Lieutenant-Governor, Senator or Representative, for the term for which he shall have been elected, who shall have been convicted

of having given or offered any bribe, threat or reward, to procure his election." *Cons. of Indiana, Louisiana.*

"Any person who shall give or offer any bribe to procure the election or appointment of any person, shall, on conviction thereof, be disqualified for an election or for any office of trust, honor or profit, under this State, for ten years, after such conviction." *Cons. of Missouri.*

Disqualification from crime.

18. "Laws shall be made to exclude from office and from suffrage those who shall hereafter be convicted of bribery, forgery, perjury, or other high crimes and misdemeanors. *Cons. of Mississippi, Louisiana.*

In some States the constitutional provision is, that the Legislature shall have power to exclude such persons from office.

In some States it is peremptorily declared by their Constitutions that no person, who may be convicted of felony, or other infamous crime, shall be eligible to any office or appointment of trust, honor or profit, in the State.

Embezzlement. Fraud.

"No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, shall ever be eligible to any office of honor, or trust, or profit, under this State." *Cons. of California.*

Clergymen disqualified.

19. "No person, while he continues to exercise the functions of a bishop, priest, clergyman, or teacher of any religious denomination, persuasion, society, or sect whatsoever, shall be eligible to either House of the General Assembly; nor shall he be appointed to any office of profit, within the State, the office of justice of the peace excepted," *Cons. of Missouri, Louisiana.*

No such person "shall be eligible to the General Assembly." *Cons. of Kentucky, North Carolina, Georgia.*

And whereas, ministers of the Gospel are, by their profession, dedicated to the service of God, and the care of souls, and ought not to be diverted from the great duty of their functions; therefore no minister of the Gospel, or public preacher, of any religious persuasion, while he continues in the exercise of his pastoral functions, shall be eligible to the office of Governor, Lieutenant-Governor, or a seat in the Senate or House of Representatives." *Cons. of South Carolina, Florida, Tennessee.*

"Therefore, no minister of the Gospel, or priest of any denomination whatsoever shall, at any time hereafter, under any pre ence

or description whatsoever, be eligible to, or capable of holding, any civil or military office or place within this State."

Qualifications of electors. Right of suffrage.

20. The qualifications of persons to vote at elections for officers, are determined by the State Constitutions.

In general, every white male person, being a citizen of the United States, of the age of twenty-one years, who has resided within the State for one year preceding, who is an actual resident of the district or township in which the election is held, and who has paid a State or county tax, is entitled to vote at all elections. Absence from the State on public business does not affect the right to vote. In some of the States a property qualification is required. In other States the right of suffrage is *universal*; neither the payment of taxes, nor the owning of property being necessary to the exercise of it. In some States "paupers and persons under guardianship" are excluded, and also "Indians not taxed," and idiots and insane persons.

In the State of Delaware the requisite age is *twenty-two* years. In the States of Massachusetts, Maine, New Hampshire, Vermont, and Rhode Island, free colored persons, otherwise qualified, are entitled to the right of suffrage; the Constitutions of those States extending it to "all persons," without distinction in regard to color or race, who are qualified.

It is so, likewise, with respect to Indians, except those not taxed, in these States and some others; whilst in particular States it is constitutionally provided that the Legislatures may extend the right of suffrage to Indians.

In some States it is so required that electors, before voting, shall take an oath or affirmation to support the Constitution of the State, or a prescribed oath or affirmation of allegiance, and also one in regard to their duties as electors. *See Cons. of Massachusetts, Connecticut.*

"Every man," otherwise qualified, "who will take the following oath or affirmation, shall be entitled to all the privileges of a freeman of this State.

"You do swear (or affirm) that whenever you give your vote of suffrage touching any matter that concerns the State of Vermont, you will do it as in your conscience you shall judge will most conduce to the good of the same, as established by the Constitution, without fear or favor of any man." *Cons. of Vermont.*

In Virginia, every white male citizen, of the age of twenty-one years, owning a freehold or a leasehold estate in land, in possession or remainder, of a certain value; or who has been a house-keeper and head of a family, for a year preceding the election,

and who has paid within that time a State tax, is entitled to vote for members of the General Assembly.

"The right of suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, seaman, marine, in the service of the United States, or by any person convicted of any infamous offence." *Cons. of Virginia.*

"No free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person) shall vote for members of the Senate or House of Commons." *Cons. of North Carolina.*

In North Carolina, the possessing of a freehold of fifty acres of land within the district is necessary to entitle a person to vote for a member of the Senate, by the State Constitution.

In several of the States it is constitutionally provided, that no soldier, marine or seaman, in the regular army or navy of the United States, shall be entitled to vote at any election in the State.

"Provided, that no person shall be disqualified from voting at any election on account of color, who is now, by the laws of the state, a competent witness against a white man." *Cons. of Tennessee.*

In reference to the residence within the State necessary to an elector; "but persons in the military, naval or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning, entitle him to the right of suffrage in the town or plantation where such seminary is established." *Cons. of Maine.*

"Or having been enrolled in the militia, and having performed military duty therein, for the term of one year next preceding the time he shall offer himself for admission, or being liable thereto, shall have been by authority of law excused therefrom;" is one of the qualifications which severally entitle a person, who shall sustain a good moral character, and take the requisite oath, to be an elector." *Cons. of Connecticut.*

In some of the State Constitutions it is provided, "that every elector shall be eligible to any office in this State, except in cases provided for in this Constitution."

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning;

nor while kept at any alms-house or other asylum of public expense ; nor while confined in public prison." *Cons. of California.*

In Wisconsin, among the persons qualified to be electors are "white persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization." *Cons. of Wisconsin.*

In Wisconsin, the State Constitution provides, that the Legislature may at any time extend by law the right of suffrage to persons not being white persons, but that no such law shall be in force until the same shall be approved by the people by a majority of votes cast at a general election.

In some of the States it is constitutionally provided, that no person who shall have been convicted of bribery, perjury, forgery, or other high crime or misdemeanor, shall have the right of suffrage.

In some States there is a difference as to the qualification of property, between electors of Senators and those of Representatives in the State Legislature.

"Persons residing on lands ceded by this State to the United States, shall not be entitled to exercise the privilege of electors." *Cons. of Rhode Island.*

By the Constitution, in North Carolina, "all freemen;" in Georgia, "citizens and inhabitants;" with the prescribed qualifications as to age, residence, property and payment of taxes, are entitled to vote at the general elections.

Privilege of electors.

21. In most of the State Constitutions, it is provided that electors shall, in all cases, except in those of treason, felony or breach of the peace, be privileged from arrest, during their attendance on elections, and in going to and returning from the same.

No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger." *Cons. of Maine, California.*

Elections.

22. Elections are held at the time and places, and in the manner, prescribed by the Constitution and laws of the State.

As to the *time*. In general, there is a general election held on one day every year throughout a State for Representatives in Congress, members of the State Legislature, and State and county officers, as may be necessary. Township, ward or borough officers are elected at a different time. Elections are generally made to commence and terminate on one day; though in some States they *may* be continued during several days.

As to the *places*. In most of the States every township or parish, borough and ward is an election district ; and elections are held at such places therein as may be directed by law.

As to the *manner*. In general, the electors vote personally by *ballot*, printed or written. In some States they vote *orally*, naming the candidate voted for.

The election is held at each district under the management of election officers, called judges and clerks, or the selectmen and town clerks of the townships. In some States the polls are kept open for only one day ; and in others until all the votes offered are given. There are two clerks at each place of election, each of whom keeps a *poll-book*, or list of voters, in which the name of every voter is entered as he puts in his vote. The votes are given singly to one of the judges of the election, and by him then placed in a *ballot box*. The votes are not opened or inspected until after the polls are closed, when they are finally counted by the judges, and a statement thereof is made by the clerks. Certificates containing the names of the candidates, and the number of votes given them respectively, are then signed by the judges and clerks, and forwarded to the proper offices. These certificates are called *election returns*. Certificates of election are issued to the persons elected.

In general, in all elections by the people the choice is determined by a *plurality*, not a majority of votes ; that is, the one of all the persons voted for who has the greatest number of votes is elected. In some of the States a majority of all the votes given is requisite to the election of particular officers.

The word "poll," in its literal signification, means a head. In common application it means a person, liable to be taxed, or voting at an election ; and polls mean the place of an election, or the persons who vote.

"In all elections in this Commonwealth, to any office, or place of trust, honor or profit, the votes shall be given openly, or *viva voce*, and not by ballot." *Cons. of Virginia*.

Similar constitutional provisions exist in Kentucky, Arkansas, Georgia.

Oaths of office.

23. All officers of a State are required, by the federal Constitution, and that of the State, to be bound by an oath or affirmation of office.

"The Senators and Representatives before mentioned, and the members of the State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution." *Cons. of U. S. Art. VI, sect. 3.*

"Members of the General Assembly, and all officers, executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity." *Cons. of Pa., Art. VIII.*

In some of the States the form of the oath or affirmation is prescribed by their Constitutions respectively.

"The following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter upon the duties of his office, to wit :

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me, God." *Cons. of Massachusetts.* See *Cons. of New Hampshire.*

"You, ———, do solemnly swear (or affirm) that you will faithfully execute the office of ——— for the ——— of ———; and will therein do equal right and justice to all men, to the best of your judgment and abilities, according to law." *Cons. of Vermont.*

"I do solemnly swear that I will be faithful and true to the Commonwealth of Kentucky," &c. *Cons. of Kentucky.*

In general, all county and township officers are, also, required by Act of Assembly to take and subscribe an oath or affirmation to support the Constitution of the United States and that of the Commonwealth, and to perform the duties of their offices with fidelity.

Tenure and duration of office.

24. Tenure of office is, in this country, the condition on which an office is held. An office may be held *at will*, the pleasure of the appointing power; for *life*, during good behavior; or *for a term of years*, during good behavior.

The tenure and duration of offices are generally determined by the Constitutions of the several States, though in some instances it is left to the Legislatures to fix them by law.

All offices are held on the condition of good behavior; the incumbents being liable to be removed on conviction for misbehavior in office, or of any infamous crime. It is, in most instances, so declared in the Declarations of Rights of the several States.

Commissions.

25. It is generally provided that all commissions shall be in the name and by the authority of the particular State, sealed with the State seal, and signed by the Governor. They are, in most instances, issued out of the office of the Secretary of the State, by whom they are attested, and in which office they are registered.

Incompatibility of office.

26. It is generally provided in the Constitution of a State, that no member of Congress from the State, or any person holding any office or appointment of profit or trust under the United States, shall at the same time, exercise any office in the State.

"No member of Congress, nor any person holding any office of trust or profit under the United States, (the office of postmaster excepted) or any other State of the Union, or under any foreign power, shall hold or exercise any office of trust or profit under the State." *Cons. of Mississippi*. See *Cons. of Louisiana, Kentucky*.

In some of the States, by their Constitutions, members of the Legislature cannot hold certain offices; and other offices are made incompatible.

It is generally so directed that no member of the Legislature shall be appointed by the Governor to any office during the term for which he shall have been elected.

In some of the State Constitutions it is provided that, "No person shall hold more than one lucrative office at the same time, except as in this Constitution expressly permitted;" it being added, in some instances, "Provided, that no appointment in the militia, or the office of a justice of the peace, shall be considered as a lucrative office."

"No person shall hold the office of Governor, and any other office or commission, civil or military, in this State, or under any State or the United States, or any other power, at one or the same time." *Cons. of Alabama*.

"Nor shall any Senator or Representative be elected to any office or appointment by the Legislature, having any emoluments or compensation annexed thereto, during the time for which he shall be elected, (except justices of the inferior court, justices of the peace, and officers of the militia,) unless he shall decline accepting his seat, by notice to the executive within twenty days after he shall have been elected; nor shall any member, after having taken his seat, be eligible to any of the aforesaid offices or appointments during the time for which he shall have been elected." *Cons. of Georgia*.

Re-eligibility.

27. There are, generally, provisions in the State Constitutions limiting the re-eligibility of persons to certain offices.

In most of the States the Governor is only eligible for a certain number of terms of the office in succession. And it is also, in many instances, so directed with respect to sheriffs, county treasurer, coroners, and other officers.

A person is re-eligible, or may be re-appointed to an office, at

any time, unless it is expressly provided to the contrary by the State Constitution or law.

Impeachment.

28. It is provided in the State Constitutions, generally, that all civil officers are liable to impeachment for misdemeanor in office. The meaning comprehends, probably, any violation of official duty, whether criminal or not. This liability to impeachment is, in theory, one of the strong safeguards for official integrity. The impeachment is presented by the House of Representatives, and tried before the Senate, of the State; the punishment to be removal from office, and disqualification to hold office in future. In most instances, the party impeached, whether acquitted or convicted, is nevertheless liable to indictment and punishment according to law in the courts of justice.

In Vermont impeachments are presented by the General Assembly and heard and determined by the Legislative Council, "taking to their assistance, for advice only, the judges of the Supreme Court."

Removal from office.

29. It is generally provided, either by the State Constitutions, or by law, that all civil officers may be removed on conviction of misbehavior in office, or of any infamous crime.

It is provided in some of the States that particular officers, as the Governor, judge, and some other officers, may be removed on the address of two-thirds of the Legislature for any reasonable cause which shall not be sufficient ground of impeachment. This subject, as it respects the Governor of a State, has been noticed in a former chapter. (*h*)

Persons holding offices *at will* may be removed therefrom by the appointing power, at the pleasure thereof, at any time. Such removal may be effected by the issuing of a commission to another person, by which the first appointment is superseded.

Indictable for neglect and misbehavior.

Wilful neglect of duty or misbehavior in office is a criminal offence, a misdemeanor, indictable and punishable at common law, or by statute. Public officers may be so punished for bribery or other corruption in office.

STATE AND STATE OFFICERS.

30. The general civil affairs of a State are conducted, under the Constitution and laws, by State officers, and its internal gov-

(*h*) See Part II, chap. V.

ernment and local matters are so carried on and administered by county and township, or parish or district officers, and by city and borough officers.

State officers may be divided into civil and military ; and the civil into executive and judicial.

31. The Governor and all the other executive officers form the general executive department of the State. The Governor and the heads of departments constitute what is commonly called the "State administration."

State officers are compensated for their services, generally by annual salaries, paid out of the treasury of the State.

Taxation and revenue.

32. The expenses of the government are generally borne by a revenue derived from State taxes, laid and collected under the laws thereof. In some of the States there is a revenue derived from the sale of the public vacant lands of the State. Premiums paid to the State by banks and other corporations, for Acts of incorporation, are, in some instances, sources of revenue. Some of the States hold stock or shares in banks or other corporations, the dividends on which afford an annual income to the State. And in some instances, canals, turnpike roads, railroads, and other public structures and improvements, made and formed by the State, yield receipts for its treasury.

In general the State Legislatures have the power of taxation without restriction ; except as to taxes or duties on imports, exports and tonnage, which they are prohibited from laying by the federal Constitution. In some of the State Constitutions there are express prohibitions "to levy a *poll tax* for State or county purposes."

The various *kinds* of taxes in a State are, in general, as follows : I. *State taxes*, the rate of which is fixed by the Legislature, generally for each year. II. *County taxes*, the rate of which the County Commissioners or trustees are authorized to fix, with certain restrictions. III. *Township taxes*, which the township trustees or supervisors may assess, not exceeding a certain rate. City and borough taxes are similar to these, assessed by the officers thereof, according to their charters or Acts of incorporation. IV. In some States, the *school taxes*, which may be laid by the county trustees or commissioners, or district school directors, not exceeding a certain amount. V. The *poor tax*, which is fixed, not to exceed a certain rate, by the trustees or commissioners, or the directors of the poor of the townships. The mode of assessing and collecting such taxes is referred to, more fully, in this chapter, under the heads of the different county and township officers.

The objects of taxation under the State laws are, in general, as follows: *Real estate*, including land and buildings, rated according to its assessed value: *Personal property*, including stocks in corporations, dividends of banks and other companies, debts bearing interest, the capital of merchants, manufacturers and brokers; offices, professions, occupations and trades; licenses to auctioneers, innkeepers, pedlars and the like.

State loans and stocks.

33. What are State loans and stocks?

Certificates of indebtedness or obligations to pay money issued by a State, payable to the holder, or order, or assigns at fixed periods, and bearing interest payable semi-annually or annually.

Many of the States have borrowed money, to a large amount, for the purpose of internal improvement, or other extraordinary expenses, on such public loans or stocks.

Secretary of the State.

34. The Secretary of State is generally appointed by the Governor of the State, with the consent of the Legislature, and in some instances without it, and for the same term of office as that of the Governor; as provided by the Constitution.

In his office is kept the Seal of the State. The originals of all the laws, and public documents, are filed, deposited and recorded in it; authentic copies thereof to be furnished, when duly required. A register of all the official acts, proceedings and appointments of the Governor, is made and preserved therein, and all commissions to State and county officers, with the Seal of the State, signed by the Governor, and attested by the Secretary of State, are issued from it; as are all other documents, requiring the Seal of the State. The returns of the election of members of Congress, State and county officers are transmitted to this office, and filed in it. The Secretary of State has the superintendence of the publication and printing of the laws, and of the distribution of the printed copies thereof, in the manner prescribed by law. It is through him that the correspondence of the State is conducted, and communications to it, and from it to other governments, bodies politic, or individuals, are properly made.

There is generally an officer of a State called the Deputy Secretary of State, appointed by the Secretary of the department, with the approbation of the Governor, and removable by the Secretary whenever he shall deem it expedient.

State Treasurer.

35. The State Treasurer is, in general, elected every year by

the Legislature of the State ; in some States, by the people ; as directed by the Constitution of the State.

It is his duty, in general, through his department, to receive and have the charge and custody of the public money of the State ; to superintend the collection of the State taxes, and of all the debts due to it ; and to pay and disburse money out of the treasury, on warrants and orders thereon, or otherwise, as directed by law. He is required, at certain periods, to furnish to the Auditor or Comptroller of the State an account of all money received and paid by his department, together with the vouchers for the payments so made, for adjustment and settlement ; and annually to present to the Legislature a report exhibiting in detail the receipts and expenditures for the preceding year, containing a statement of the finances of the State, and giving an estimate and plan of future revenue.

It is generally provided by the Constitution of a State that the State Treasurer's annual account of the receipts and expenditures of the State shall be published, for the information of the people.

State Auditor or Comptroller.

36. The Constitution of a State generally requires that there shall be a State Auditor or Comptroller, and prescribes the mode of his appointment. He is, in most instances, appointed by the Governor of the State, with the advice and consent of the Senate ; though in some States he is elected by the Legislature or the people ; his term of office being, generally, the same as that of the Governor.

His duties are, in general, to examine, adjust and settle, all claims, bills and demands for money against the State ; the accounts of officers and agents entrusted with the collection, receipt or disbursement of the public money ; the accounts particularly of the State Treasurer ; and to preserve the vouchers relative to such accounts, and to keep a proper register of them.

In some States it is made his duty to present annually to the Governor, or to the Legislature, an account of the finances of the State, with an estimate of expenses for the ensuing year, and of the accruing revenue and resources.

Land Office.

37. In some States there is a Land Office, established by law, under the charge of a Secretary thereof. It has the management and direction of all affairs relating to the lands belonging to the State ; the survey and sale of such vacant and unsettled lands, the granting and issuing of deeds or patents therefor, and the collection and receipt of purchase money due thereon ; all the documents

and papers concerning the lands being returned to, and deposited and preserved in, this office.

Commissioners of canals and railroads.

39. In some States there are such officers ; generally three or more, forming a Board, of which one is President, and having a stated principal clerk. It is under their direction that the laws for the construction of the State canals and railroads, and for their extension, are carried into effect. They have the general superintendence and management of the canals and railroads belonging to the State, and the repairs thereof ; being authorized to regulate the transportation and travelling on them, to fix the rates of tolls and the modes of collection thereof, to appoint the agents and persons employed in the service of the State ; and to establish rules for these purposes, and impose fines and penalties for their violation. They are required by law to make an annual report to the Legislature of the affairs of the canals and railroads, the receipts from them, and the expenditures on account of them.

These Commissioners are generally elected by the people, or the Legislature, to serve for three years ; in some instances, one of them being elected every year.

In some States there are Commissioners of Internal Improvements.

Superintendent of Common Schools.

40. In the States in which the system of Common Schools is adopted, there is a Superintendent thereof, being a State officer, either appointed by the Governor of the State, or elected by the Legislature, for a term of years, generally the same as that of the Governor.

It is under his direction, and through his department, that the laws relative to these schools are carried into effect, that the State appropriation of money for their support is rightly distributed and applied, that a uniform method of instruction is observed, and a proper supervision of them, under the laws, is exercised. It is particularly made his duty to present, annually, to the Legislature, a report of his proceedings under the laws during the preceding year, the expenses incurred, the state of the schools, and the general operation of the system ; together with such propositions for the amendment of the laws in regard to the subject, and for the promotion of education, as experience may have suggested.

We have had our attention directed to the provisions of the State Constitutions in respect to education and common schools, in the preceding parts of this work. (*k*)

(*k*) See Part II, chap. III, IV.

Military officers

41. It is generally provided by the Constitution of a State that the Governor shall be the commander-in-chief of the militia, and of the military forces of the State, except when they shall be called into the service of the United States; and, also, that all other military officers shall be appointed or elected as may be directed by law. In some States, however, it is so provided, that there shall be an Adjutant General of the State, to be appointed by the Governor or the Legislature, for the same term as that of the Governor; that the Major-Generals shall be elected by the field officers of divisions respectively, Brigadier-Generals by the field officers of their brigades respectively, and other field officers and company officers by the persons subject to militia duty within their respective regiments, battalions and companies.

All commissions for military officers are issued by the Governor, under the State Seal, and signed by him.

See the heads "Militia," in other parts of this work.

Judges.

The Judges of the courts of record are State officers, commissioned by the State, and their salaries being paid out of the State treasury; though, in some instances, having jurisdiction, and acting only in particular counties or judicial districts. See Judiciary.

COUNTY AND COUNTY OFFICERS.

42. The several States are, in general, divided, in regard to territory, for the convenience of internal government and the administration of the laws, into counties, and each county into townships or districts. Cities, which are divided into wards, may exist in counties, and boroughs, in which there may be wards, and towns may be included in townships. In some States counties are divided into what are called towns or parishes, and these may embrace boroughs and villages.

These divisions existed from the earliest history of the country, before the formation of the general government.

43. Counties are formed and erected by statute, or Act of Assembly. They are generally so organized as bodies politic, or public municipal corporations. "As such they may sue and be sued at law; may take and hold real estate, within their respective limits, and personal property; make contracts; become indebted, and have debts due to them; for the objects and purposes authorized by law. Their powers are exercised respectively by officers called county commissioners or trustees. Each county has a

county seal, to be kept by its commissioners or trustees, and used for the authentication of their official acts and proceedings.

The title to the county court-houses, jails, work-houses, and buildings for the county offices, is vested in the counties respectively, for the use thereof.

County taxes and expenditures.

44. What are, in general, the objects of expenditure by a county?

The erection and keeping in repair of a court-house, jail, and buildings for the county officers; the accommodation of the courts in the court-house whilst in session; the pay of jurors and constables for attendance at court; costs in certain criminal cases; the maintenance of prisoners in jail; building county bridges; paying viewers of public roads, road and bridge damages; the pay of the officers of the general election in the county; the pay of the sheriff and other officers for services performed for the county; coroners' inquests *post mortem*; the support of the poor where there is a county poor house; and various matters directed by law to be done at the expense of the counties severally.

How is money obtained for defraying the expenses of the county?

By taxes assessed and collected for the use of the county, called county rates and levies; and from the proceeds of fines and forfeitures.

There are, in some of the States, certain fines and forfeitures, imposed on persons convicted of crimes and offences, or otherwise incurred, directed to be paid into the treasuries of the counties for the use thereof, as, also, in some instances, certain costs of court in civil cases.

Courts of justice. Seat of justice.

45. There is generally a court for each county, with original jurisdiction, whose sessions are held at stated periods in every year; and, in most cases, a court of review, or of errors and appeals; according to the judicial system of the State. The clerk or prothonotary of the court has his office in the county. There are sometimes several courts held in a county of different jurisdictions, as to civil or criminal cases, or as to the amount or value in controversy. (*m*)

In some States there is a Judge of Probate in each county. There are Justices of the Peace, or like officers, in each county; and in some States, in each township or parish.

The borough, town or place where the county courts are held is called the Seat of justice of the county, or shire town. In such

(*m*) See Part II, chap. V.

place the county offices are established and administered, and the courts held in public buildings erected for the purpose, and there is a county jail.

County officers.

46. The civil officers of a county are, generally, a Prothonotary or Clerk of the county court or courts, a Register, a Recorder of Deeds, a Sheriff, a Coroner, County Commissioners, or Trustees, or a Board of Police, a County Treasurer, a County Auditor, or Auditors, a Surveyor, and in some States a Ranger, Directors of the Poor, Notaries Public.

These officers attend to the discharge of their duties in appropriate public buildings, at the county town or seat of justice.

County Commissioners, Trustees, or Board of Police.

47. They are officers elected by the people of the county ; who are authorized to assess and cause to be collected county taxes, as prescribed by law ; to make contracts for the erection of a court-house, jail, county offices, and county bridges, and the repairs thereof ; to direct the application of the funds of the county to the proper objects of expenditure ; and to perform various other duties as provided by law. The expenses of the county are paid by their orders on the county treasurer.

They form a Board, having a stated clerk, and their office being at the seat of justice of the county.

They exercise the corporate powers of the county. The county seal is kept by them, at their office ; and it is applied by them to their warrants, precepts, certified copies of their proceedings, and their other official papers.

The lists of taxable inhabitants of the county, the returns and valuations of taxable property, and assessments of taxes, as made by the assessors or other officers of townships, or parishes, are filed in their office.

They are required to publish, every year, a statement of the receipts and expenditures of the county, as settled by the County Auditor or Auditors.

In some States there are county Boards of Police, with powers similar to those of County Commissioners or Trustees in other States.

“ The qualified electors of each county shall elect five persons for the term of two years, who shall constitute a Board of Police for each county, a majority of whom may transact business ; which body shall have full jurisdiction over roads, highways, ferries and bridges, and all other matters of county police, and shall order all county elections to fill vacancies that may occur in the offices of their respective counties.” *Cons. of Mississippi, Art. V, Sect. 20.*

"The members of the Board of County Police shall *ex officio* be conservators of the peace, and shall by law be vested with ample powers in this respect." *Cons. of Mississippi, Art. V, Sect. 22.*

County Treasurer.

48. There is a Treasurer for each county, elected by the people, every one or two years.

It is his duty to receive and have the charge of the moneys arising from the county taxes, and otherwise belonging to the county; and to pay out the same on the orders or warrants of the county Commissioners or Trustees, and in other manner, as directed by law.

He is required, once in every year, to state his account, and produce his vouchers, for settlement by the county Auditor or Auditors.

Prothonotaries or clerks of courts.

The duties of these officers are, in general, to record the proceedings, judgments, orders, and sentences of the courts, to file and preserve the records and papers thereof, to give authenticated copies of them, to issue judicial writs and process under the seals of the courts; and to perform various services prescribed by law.

From these offices are, in general, issued process by which suits at law are commenced, or writs of execution therein, subpoenas for witnesses, and other legal process. Here are entered of record judgments, by confession or otherwise, which are liens on real estate. In most States the returns of the elections held in the county are filed in these offices.

Register.

49. The office relates to the registry of wills and testaments, and papers concerning the estates and property of decedents.

All wills and testaments are generally required to be filed and recorded in the office of the Register of the county, who takes the probate of the same, and grants *letters testamentary* thereon. He grants letters of administration on the estates of intestates. In his office also are filed the accounts of executors and administrators for settlement. These duties are performed in some of the States by the clerk of the county court.

In some of the States the officers who perform these duties are called Registers of Probate; and there are Judges of Probate, having jurisdiction of questions touching such matters.

In some States there are distinct Orphans' courts, for the several counties, the clerks of which have offices in which are filed and recorded the proceedings of the courts for the appointment or

removal of guardians of minors, their accounts, the distribution of estates of decedents, and like matters.

Recorder of Deeds.

50. There is generally established by law a Recorder's office in every county in a State for the recording of deeds, conveyances and mortgages, and other instruments of writing. The Acts of Assembly of the States generally provide that if a deed for land and tenements is not recorded within six months, it shall be void against any subsequent *bona fide* purchaser without notice; and that a mortgage of land shall take effect, as against persons not parties to it and *bona fide* interested without notice, from the time of its being recorded, or its presentation for that purpose; and that deeds recorded shall be notice, from the time of their being recorded, to any subsequent purchaser. Copies or exemplifications of deeds recorded, certified by the Recorder under the seal of his office, are evidence of the deeds in courts of justice and otherwise.

Sheriffs.

51. A Sheriff of a county is the executive officer of the courts of the county, and as such authorized and bound to serve and execute all writs, orders, sentences and decrees thereof. He is also, by virtue of his office, conservator of the peace in the county, and empowered to suppress affrays and unlawful assemblies, and generally to preserve the peace; and to arrest all persons guilty of criminal offences, on personal view, and with or without warrant. Sheriffs are mostly keepers of the county jails, except where it is otherwise ordered by law. There are various other duties, in relation to selecting and summoning jurors, to the elections held in the county, and other matters, required of him by Acts of Assembly. They may appoint deputies and jailers, under them, and remove them at pleasure; being responsible for their official acts.

Sheriffs may require the assistance of the people, in suppressing riots and affrays, and arresting criminals.

For such purposes he can raise the *posse comitatus*, or power of the county, that is, such a number of men as is necessary for his assistance; and every person, of proper age, and not disabled, is bound to obey his summons, a refusal to do so being an indictable offence.

Coroners.

52. The duties, in general, of a Coroner are, to serve and execute all writs, orders and process of the courts, where the Sheriff of the county is a party or interested; and to exercise the

office of Sheriff, in case of a vacancy in the office, and until another Sheriff shall be commissioned.. He is a conservator of the peace, within the county, having the same power which the Sheriff as such possesses. He is also authorized to hold inquests *post mortem*, on the bodies of persons dying accidentally or by violence.

Prosecuting Attorneys.

51. The Attorney General of the State has the charge and superintendence, on behalf of the State, of criminal prosecutions and proceedings in general; and in most of the States, for the purpose of conducting them, he has his Deputies in the several counties or courts, who are appointed and removed by him at his pleasure. They are called prosecuting attorneys. In some of the States, there are officers called Prosecuting Attorneys, elected by the people, or otherwise appointed for each county, whose duty it is to manage and conduct, on the part of the State, all criminal prosecutions therein.

Directors of the Poor.

52. In some States, by Act of Assembly, there are poor houses authorized to be erected and maintained, for the support of the poor, at the expense of the county; there being elected by the people of the county, Directors or Overseers of the poor, who have the management of the poor house, and under whose direction the laws for the relief of the poor are carried into effect. See the head "Directors or Overseers of the Poor," further on, on this chapter.

County Surveyors.

53. These officers are appointed by the chief officer in the Land Department, or otherwise, as directed by law. It is his duty to make surveys of the vacant lands belonging to the State; in some cases to lay out public roads, as ordered by the courts, or according to law; to fix line fences between the lands of different owners; to make returns of unseated lands, for the purposes of taxation, and to perform similar services.

County Auditors.

54. They are officers, generally elected by the people, who are authorized to adjust and settle the accounts of the County Treasurer, and other persons entrusted with the receipt and expenditure of the money belonging to the county.

Notaries Public.

55. They are officers authorized to take the proof and ac-

knowledge of instruments of writing in relation to commerce and navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships and vessels, contracts of freight, letters of attorney, and the like. They present bills of exchange, drafts, promissory notes, and commercial and negotiable paper generally, for acceptance and payment, and protest the same for non-acceptance and non-payment; their certificates being made by law *prima facie* evidence thereof in courts of justice. Bills and notes in banks are thus protested by them. They may administer oaths and affirmations in matters relating to their duties. They keep a register of their acts; and have a notarial seal, with which all their certificates and declarations are to be authenticated. They take an oath of office, and give bonds for the performance of their duties. They receive fees of office, for particular services performed, as fixed by law.

There are, in general, three notarys public in each county; there being a greater number in the cities, and in some particular counties. They, generally, are appointed by the Governor, as provided by law, for the term of three years, or other period.

Township and Township Officers.

56. Counties are divided, in general, into townships, towns, parishes, or districts.

The Courts of Quarter Sessions, or other courts of the several counties of a State, are generally authorized to erect new townships within them respectively, to divide any township already erected, and to alter or determine the lines of adjoining townships, so as to suit the convenience of the inhabitants.

57. In most instances, townships are bodies politic, public municipal corporations, (a) being made so by Act of Assembly or law, and having capacity as such to sue and be sued at law; to hold real estate and personal property, and to make contracts, for the purposes of the townships, as authorized by law. The corporate powers of townships are, in general, exercised by officers called Supervisors, Trustees or Selectmen.

58. The officers of a township are, generally, Trustees or Selectmen, Wardens or Constables, Assessors, Supervisors or Surveyors of Roads, Overseers or Auditors, and Justices of the Peace. In some States there are, also, in each township a township clerk, fence viewers, and other local officers. In those States in which the common school system has been adopted, there are elected school directors for every township or school district.

59. Township officers are generally elected by the qualified

(a) See Part II, chapt. III.

voters of the townships respectively, at the township elections, every year; no person being eligible to such office who is not an inhabitant of the proper township.

Generally, persons are liable, by law, to be fined for not accepting a township office, or refusing to serve when elected thereto; though, in most instances, a person cannot be required to serve as any such officer more than a certain number of terms in a period of years, as three years in nine or twelve, or the like.

60. Are all township officers required to take an official oath?

They are, generally, required to take and subscribe an oath or affirmation to support the Constitution of the United States, and that of the Commonwealth, or State, and to perform the duties of their offices with fidelity.

Township taxes.

61. There are township taxes, called township rates and levies, laid and assessed by the township Supervisors, Trustees or Selectmen, to pay for laying out and keeping in repair, the public roads and bridges; and by the Overseers or Directors of the Poor, for the support of the poor; and the expenses incident thereto, in the townships respectively. There is also a school-tax, assessed by the school directors, in those townships or school districts, where the general school law has been adopted.

Trustees, Selectmen, Supervisors.

62. In some States, there are township officers called Selectmen, Trustees or Supervisors, who are elected annually by the people. They exercise the corporate powers of the townships, as county commissioners or trustees do those of counties, having various duties to perform in relation to elections, taxes, roads, schools, the support of the poor, and like matters.

Supervisors of roads.

63. There are generally in every township two or more supervisors of the roads and bridges; whose duty it is to attend to the opening and repairing of the public roads and bridges, in their respective townships; and who have, for such purpose, authority to assess, levy and collect township taxes. They are elected by the people for one or more years. In some States they are called surveyors of roads.

Public roads, are generally, authorized to be laid out and opened by the proper court of the county, upon the petition of the citizens, in the manner prescribed by law. In some States, roads of a particular class, are authorized by the supervisors of roads, or township trustees.

Where roads or bridges are too expensive to be laid out or erected by the respective township, it being so declared by certain legal proceedings, they are made by the county.

In some States, there are Commissioners of Roads and Bridges, elected by the people for the township, one every year to serve for three years; and Path Masters or Road Masters, for particular roads or districts, appointed by them, or elected by the people.

Directors of the poor.

64. In the several States there is provision made by law for the support of the poor. The general system is, that every township or parish shall provide for its own poor; and Overseers or Directors are appointed, two or more in each township, by the election of the people, to receive the poor, and to take care and provide for them; being authorized, for that purpose, to assess, levy and collect township taxes, called poor rates. Provision is generally made by law for compelling the particular township, where a poor person had his *last settlement* by residence for a certain period and other requisites, to support him. In some States the poor are maintained in county Poor Houses, built and kept up at the expense of the counties respectively.

In some instances, the duties of Overseers or Directors of the poor are performed by the Township Supervisors.

Assessors of taxes.

65. There are generally elected for each township one or more assessors, whose duty it is to make a list of all the taxable persons and property within their townships respectively, with a valuation of their property and estates, and to rate and assess the county taxes thereon, and make returns thereof to the proper county officers. These assessments are also used for assessing the different township taxes. In some States, the enumeration of taxables, and valuation of property, for State taxes, and other State purposes, are, also, made by the township assessors.

Collectors of taxes.

66. There is generally a collector of taxes for each township, appointed by the trustees or commissioners of the county, or elected by the people; who is empowered to receive, levy and collect, the county and township taxes, within the township. In some States, there is a collector of county taxes separately.

Township Clerk.

67. It is directed by law, in some States, that there shall be a township clerk for each township, to be elected by the voters thereof every year.

It is his duty to act as clerk of the Trustees or Supervisors of the townships, and keep minutes of their proceedings. He has the charge and care of what is called the township book, for the purpose of entering in it all matters which he is required by law to record, and that it may be open to the inspection of all persons who may have occasion to examine the same.

In these States, any person taking up on his improved or enclosed lands any stray horse, cattle, or sheep, is required by law to give notice thereof to the owner, if he can be found, or otherwise to deliver a particular description of such stray to the township clerk, whose duty it is to enter the same on his book.

School Directors.

68. In those States where the common school system has been established, there are several school directors elected every year by the people for each township or school district. It is their duty to provide school houses, to employ teachers, and superintend the schools, as directed by law.

The common school system is a system by which schools are established, by law, throughout a State for the education of the children of all persons gratuitously; the schools being supported by a permanent State fund, by appropriations out of the State treasury, or by taxes imposed on all the people of the particular districts; there being State officers appointed for the general superintendence of the schools, and school directors elected by the people of the districts respectively.

It is established in Massachusetts, Connecticut, New Hampshire, Vermont, Maine, New York, Rhode Island, Pennsylvania, Ohio, Michigan, Indiana, Texas, Iowa, Wisconsin, California.

Township Auditors.

69. In some of the States, there are auditors elected by the people for each township, every year, to adjust and settle the accounts of Supervisors of Roads, Overseers of the Poor, School Directors, and other persons, intrusted with the receipt and expenditure of money raised for township purposes.

Justices of the peace.

70. How are Justices of the Peace appointed?

There are generally two or more Justices of the Peace, in each township; in most instances, elected by the people, for a term of years; though in some States they are appointed by the Governor.

What is the nature of their powers and duties?

Justices of the Peace are judicial magistrates, of limited jurisdiction. Their ordinary jurisdiction is confined to criminal cases.

They are by virtue of their offices *conservators* of the peace, within their proper townships or districts; and may suppress riots, affrays and disturbances of the peace. They have authority to receive complaints and informations, generally for all criminal offences; to issue their warrants and process, in the name of the State, for the arrest of all offenders, to take their examination and testimony of witnesses in relation to the offence, and to commit them to gaol for trial before the proper court, or, except in capital cases and others of the highest grade, to admit them to bail for their appearance at the court to answer the charge against them. They may require sureties of the peace of dangerous persons, or those whom there is reasonable ground to suspect of an intention to commit a felony, or any breach of the peace. In some of the States they have power to try and determine, and punish for, misdemeanors and offences of the lesser grade. They take the acknowledgement and proof of deeds, conveyances, and instruments of writing. There are often various other duties imposed upon them by special Acts of Assembly. And in a few States, they have conferred upon them, by statute, limited jurisdiction in civil suits at law, where the sum or value in controversy does not exceed a certain amount; there being an appeal from their judgments to some court of record. Their compensation is derived from fees of office allowed by law; which are included in the costs of prosecution or suit, or paid by the parties for whom the service is performed.

In some of the States, Justices of the Peace are judges of the Courts of Quarter Sessions of the Peace or County Courts, being associated with a President or other judge learned in the law.

Constables.

71. Constables are civil executive officers, in every township. It is their duty to serve and execute all warrants, writs, and process of Justices of the Peace. They are *peace* officers, and authorized, with or without warrants from magistrates, to suppress riots, affrays and disturbances of the peace; and to arrest the offenders; and generally to arrest persons guilty of felonies, crimes and misdemeanors. It is their duty to give information, to a Justice of the Peace or other proper magistrate, of any crime or offence, committed in their townships, in their knowledge; to execute the warrants of magistrates for the arrest of criminals and offenders, or for committing them to jail.

They are required to attend the stated sessions of the ordinary courts of the county, and to make returns thereto of certain offences, and violations of the law, that may have been committed in their respective townships, in their knowledge; and a certain number of constables may be selected by the courts to attend their

sessions, to preserve order, and act as ministerial officers of the court.

There are many other duties devolved on them by special Acts of Assembly, relative to elections, the roads, and various local matters in the townships.

Their compensation is derived from fees, perquisites, or costs allowed by law; and, in some cases, they receive daily pay from the county, for making their returns to the courts, and attending upon them at their sessions.

There are generally elected by the people two constables for each township, to serve for a year. (*n*)

Cities.

72. A city is a large town incorporated as a city by a law of the State, with power in its inhabitants to make by-laws or ordinances for their government in local matters, to appoint certain officers, and to levy and collect taxes for these purposes.

73. The officers of a city, under its Act of incorporation, are usually, a Mayor, Recorder, members of the Council or Councils, Solicitor, Treasurer, High Constable, Assistant Constables, Street Supervisors, Watchmen, and the like.

A city is, generally, divided, for the purposes of civil government, into wards and precincts. It is, also, in most instances, a part of the county in which it is situated, and as such subject to the general laws of the State, except where it is otherwise expressly provided by law.

In some of the State Constitutions it is made the duty of the Legislatures to pass laws restricting the powers of cities, and other municipal corporations, to lay and assess taxes, to borrow money and to contract debts. See Part II, chap. IV.

What officers under the general laws of the State are there usually in a city?

Judges and other officers of the courts of justice; the several county officers, as Sheriff, Coroner, Recorder of Deeds, Register, County Commissioners, County Treasurer, and County Auditors; and in the wards respectively, Aldermen, Constables, Assessors of taxes and Collectors of taxes.

Mayor.

74. What officer is a mayor of a city?

A mayor is the chief magistrate of a city under its charter or Act of incorporation. He has judicial cognizance especially of prosecutions and suits for violations of the ordinances of the city. In some of these cases he is authorized to try and determine, and

(*n*) See Part II., chap. VI., head Constables.

punish, by summary conviction; but generally he must proceed by issuing process, and holding to bail or committing the offender for trial at the proper court, which is mostly a Mayor's Court held by himself or the Recorder together with a certain number of the aldermen of the city.

In many of the States, the mayors of the cities are also vested, by statute, with the powers of *conservators of the peace*, in general, within their respective cities, and authorized to entertain complaints for offences at common law and under the general law of the State; to issue warrants and process thereon for the arrest of the offenders, and to admit them to bail, or commit them to gaol, in order to their trial before the proper court of justice; and in some cases to try, determine and punish in a summary manner.

There are often, various incidental duties and powers appertaining, under statutes, to the office of a Mayor of a city; such as taking the acknowledgment and proof of deeds and other instruments of writing, administering oaths and affirmations, performing the marriage ceremony, and the like.

Aldermen.

75. Aldermen are judicial magistrates in cities, having therein the same jurisdiction and powers which Justices of Peace exercise in the several townships, under the laws of the State; and having, also, cognizance of suits and prosecutions, and various powers, under the ordinances of the city. There is, generally, one or more aldermen for each ward in a city; in some States appointed by the Governor of the State, but, in most cases, elected by the people for a term of years. In some cities they are members of the Mayor's Court of the city. Their compensation is derived from fees prescribed by law.

Boroughs.

76. A borough is an incorporated town, the inhabitants of which are authorized by its charter or Act of incorporation to make by-laws or ordinances for the regulation of local matters therein, to elect borough officers, and to assess and collect taxes for such purposes.

Towns are incorporated as boroughs, generally, by an Act of the Legislature of the State. In some States provision is made by law for incorporating them by the courts of justice.

The officers of a borough are, usually, a chief burgess, assistant burgess, members of the town council, treasurer, town clerk, high constable, and assistant constables.

A borough is, generally, divided into wards. It is part of the township in which it is situated; the general laws of the State

operating within it, as they do in other parts of the township or county; except where it is otherwise provided by law. Boroughs, however, are in most instances made by law territorial divisions and parts of their respective counties, in relation to county and State affairs, and to the administration of the laws, in the same manner as townships are.

The officers within a borough, under the general laws of the State, are Justices of the Peace, Assessors, Collectors of Taxes, and the like.

APPENDIX.

NOTE, A.

The proposition that the federal Constitution was the act of the people of the United States, as stated here, and in other parts of this work, has the preponderance of political and judicial authority in its favor, and is now generally received as correct. It has been held, in contradistinction thereto, that the Constitution was adopted by the several States, or by the people of the States severally, as sovereign political bodies or communities. And on this last mentioned statement has been founded the opinion of some, that the Constitution is to be considered a contract, a league, between the several States, in their original sovereign political capacities respectively, and that, from its nature, it is the subject of rescission or abrogation; any State, as a party thereto, having a right, for what it deems a violation thereof, to recede from its obligations. In connection with these views, it has been held, by some, that the States, at the time of the formation of the Constitution, are to be regarded, in their relations to each other, as only several and distinct communities, though confederated for certain purposes; and in the view of others, they are to be considered as having been then, in fact, united as a nation; having a general government, created and acting by the common consent of all the people of all the States.

There can, of course, be nothing more here given than a mere reference to the existence of these different representations, as bearing on our general subject, without recurring to the particular grounds on which they have been made, or to the theories derived from them.

The important consideration is, that, whichever of the two first mentioned propositions, relative to the manner in which the Constitution was formed, may be correct, and consistently with either, it is an act and ordinance of government, established by the people of the United States; according to the view presented in this work. And, as following from this position, it is thought proper, in this connection, to exhibit and inculcate these principles in regard to the nature and powers of our government.

The general government is one of limited and enumerated powers ; which are given by the express terms of the federal Constitution, or by the necessary implication therefrom.

In our system of government the several States exist as organized bodies, in their political capacities, being recognized as such in the Constitution, and performing important acts under it.

By the Constitution there are reserved to the people of the States severally, all the powers not delegated by it to the general government, or any department thereof, or relinquished or restricted by mutual stipulations in it between the States, or prohibited by it to the States severally, or the people ; these reserved powers and rights not being derived from the Constitution, as their source, but being those originally possessed by the several States, and the people, by virtue of their inherent sovereign authority, and excepted and retained out of the powers conferred by the Constitution ; being, indeed, the residuary sovereignty and rights of the several States and the people.

The several States, the people thereof respectively, are sovereign in the enjoyment and exercise of all their reserved and residuary powers. The several States, the people thereof respectively, are sovereign in the ownership of their own soil and territory, and in their jurisdiction over them, exercised conformably to the Constitution. The several States are sovereign, as to their municipal laws and internal police.

A prohibition in the Constitution upon a State, as to any given subject, cannot enlarge or vary the powers delegated to Congress, or the general government, so as to bring within its jurisdiction, any matters not within the enumeration of the powers granted.

The federal Constitution is an act and ordination of government, paramount and supreme, throughout the limits of the Union, unalterable and irrevocable, except in the manner prescribed by itself.

The Constitution has provided for its own interpretation, in reference to matters occurring in the course of the administration of justice, through the Supreme Court of the United States, than which there can be no other of any authority or force. And, in consequence, no State, or the people thereof, can constitutionally annul any law of the United States, or resist or prevent its operation within the boundaries thereof : And no State, nor the people thereof can constitutionally secede from the Union.

NOTE, B.

“Slaves have no political rights or power, and in the representation of federal numbers are regarded as property. The basis of representation by federal numbers is composed of people and property.” “The inevitable effect of making five slaves equal to three freemen is to take power from the majority of the people; and so long as this apportionment of representation among the States continues, a minority of the people of the United States, in the aggregate, may elect a majority of the members of the House of Representatives; and the conventions or legislatures of a number of slaveholding States being a minority of all the States can perpetuate this state of things,” by preventing an amendment to the federal constitution. *Baldwins' Constitutional Views*, p. 22.

NOTE, C.

*Population of the United States and number of Representatives in Congress from each State.**

STATES.	White Popu- lation.	Free colored population.	Total free population.	Slaves.	Federal popu- lation.	No of Reps.
Maine,	581,813	1,356	583,169		583,169	6
New Hampshire,	317,456	520	317,976		317,976	3
Vermont,	313,402	718	314,120		314,120	3
Massachusetts,	955,450	9,064	994,514		994,514	11½
Rhode Island,	143,575	3,670	147,545		147,545	2½
Connecticut,	363,099	7,693	370,792		370,792	4½
New York,	3,048,325	49,669	3,097,994		3,097,994	33
New Jersey,	465,513	23,820	489,466		489,466	5
Pennsylvania,	2,258,463	53,323	2,311,786	222	2,311,786	25
Delaware,	71,169	18,073	89,242	2,290	90,616	1
Maryland,	417,943	74,723	492,666	90,868	546,866	6½
Virginia,	894,800	51,333	949,133	472,528	1,232,649	13
North Carolina,	553,025	27,463	580,491	283,548	753,619	8½
South Carolina,	274,567	8,956	283,523	384,984	514,513	6
Georgia,	521,572	2,931	524,503	381,682	753,512	8
Florida,	47,211	924	48,135	39,309	71,720	1
Alabama,	426,486	2,293	428,779	342,878	634,514	7½
Mississippi,	295,718	930	296,648	309,878	482,374	5
Louisiana,	255,491	17,462	272,953	244,809	419,838	4
Texas,	154,034	397	154,431	58,161	189,327	2
Arkansas,	162,189	608	162,797	47,100	191,057	2
Tennessee,	756,733	6,401	763,154	239,460	906,830	10½
Kentucky,	761,417	10,007	771,424	210,981	898,012	10½
Missouri,	592,004	2,613	594,622	87,422	647,075	7½
Ohio,	1,955,108	25,319	1,980,427		1,980,427	21
Michigan,	395,097	2,557	397,654		397,654	4
Indiana,	977,628	10,788	988,416		988,416	11
Illinois,	846,035	5,435	851,470		851,470	9
Wisconsin,	304,758	632	305,391		305,391	3
Iowa,	191,879	335	192,214		192,214	2
California,	91,632	965	92,597		92,597	2
Total	19,423,915	423,384	19,847,301	3,200,634	21,797,673	234
District of Columbia,	38,027	9,973	48,000	3,687		
Minnesota,	6,038	39	6,077			
New Mexico,	61,530	17	61,547			
Oregon,	13,088	206	13,294			
Utah,	11,330	24	11,354			
Total.	19,553,923	433,643	19,987,573	3,204,347		

RECAPITULATION.

States.	Total free popu- lation.	Slaves,	Representative population.	Representa- tives.
Free States,	13,434,798	222	13,436,931	143
Slave States,	6,412,502	3,200,412	8,330,742	90
Districts and Territories,	140,272	3,713		

* See, as to the number and apportionment of Representatives, p. 75.

† The above table is taken from the census of 1850, on which the apportionment of Representatives is founded. In the column of Representatives the numbers marked thus† include one Representative allowed for the residuary fraction of federal population.

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